TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 184 25

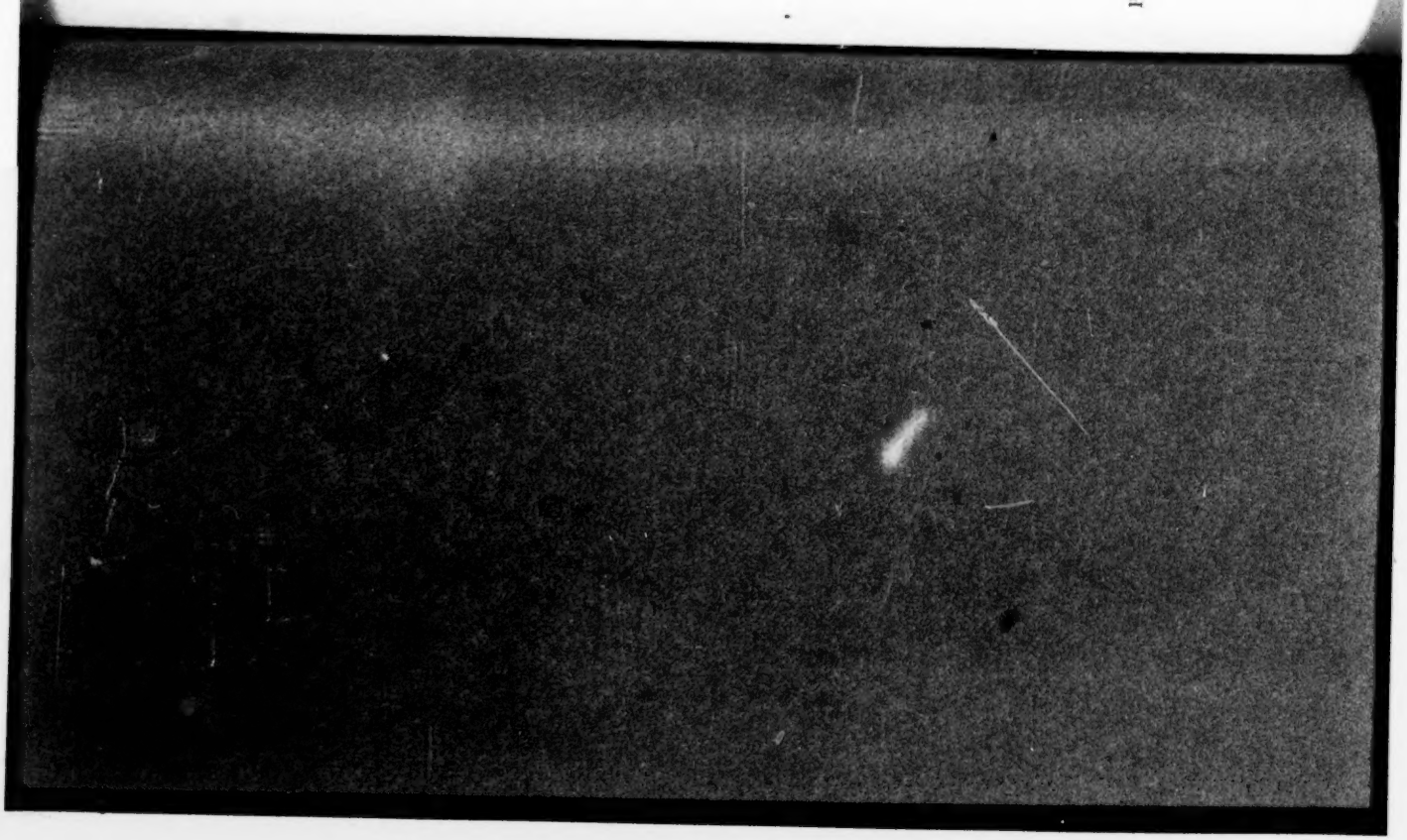
THE UNITED STATES, APPELLANT,

v.

THE SOUTHERN PACIFIC RAILROAD COMPANY, GEORGE LOOMIS, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED JANUARY 15, 1900.
(17610.)



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INDEX.

	Original.	Print.
ipulation as to record to be printed	1	1
nended citation	12	12
oceedings in circuit court	16	16
Order on filing and entering mandate of Supreme Court of the United States	16	16
Order dismissing further proceedings as to certain lands	19	19
Order for further decree	26	26
Opinion on motion for further decree	27	27
Order suspending operation of final decree	44	44
Decree	48	48
Stipulation concerning record on appeal	71	71
Petition for appeal	72	72
Order granting appeal, etc	73	73
Assignment of errors	74	74
Clerk's certificate	88	88
tions of record in case of Southern Pacific Railroad Company et al. v. nited States, No. 193, in United States circuit court of appeals	88½	88½
Bill of complaint	89	89
Subpœna	101	101
Marshal's return	102	102
Amended bill of complaint	103	103
Answer to amended bill	122	122
Order substituting Graves as respondent	147	147
Supplemental and amended answer	148	148
Order allowing amended answer to be filed, etc	183	183
Decree	184	184

	Original.	Print.
Portions of record in case of Southern Pacific R. R. Co., etc.—Cont'd.		
Deposition of D. G. Schofield	190	190
Direct examination	190	190
Cross-examination	203	203
Redirect examination	209	209
Cross-examination	210	210
Redirect examination	218	218
Defendants' exhibits before the special examiner—		
Contract No. 103	220	220
Contract No. 104	222	222
Contract No. 105	228	228
Contract No. 106	234	234
Contract No. 107	239	239
Contract No. 108	245	245
Contract No. 109	250	250
Contract No. 110	255	255
Contract No. 111	260	260
Contract No. 112	266	266
Contract No. 113	271	271
Contract No. 114	276	276
Contract No. 115	281	281
Contract No. 116	287	287
Contract No. 117	292	292
Contract No. 118	297	297
Contract No. 119	302	302
Deposition of Jackson A. Graves	308	308
Direct examination	308	308
Cross-examination	314	314
Deed No. 4719	315	315
Contract No. 4720	321	321
Contract No. 4721	327	327
Contract No. 4723	333	333
Deed to J. A. Graves	340	340
Deposition of M. W. Stimpson	346	346
Direct examination	346	346
Cross-examination	350	350
Defendants' exhibits before the special examiner—		
Contract No. 110	351	351
Contract No. 111	357	357
Deposition of W. E. McVay	362	362
Direct examination	362	362
Cross-examination	364	364
Contract No. 8953	365	365
Deposition of W. D. Gould	371	371
Direct examination	371	371
Cross-examination	379	379
Contract No. 4726	379	379
Deed No. 4172	386	386
Deed No. 1637	392	392
Deed No. 1696	398	398
Contract No. 7973	403	403
Deed No. 7872	407	407
Deed No. 4168	412	412
Deed from James W. Hait	418	418
Deed from Mary L. Gould	420	420

	Original.	Print.
Portions of record in case of Southern Pacific R. R. Co., etc.—Cont'd.		
Deposition of M. D. Painter	423	423
Direct examination	423	423
Cross-examination	426	426
Contract No. 4724	427	427
Deposition of Stefano Cuneo	433	433
Direct examination	433	433
Cross-examination	436	436
Redirect examination	436	436
Re-cross-examination	437	437
Contract No. 4487	437	437
Deposition of G. Suraco	442	442
Direct examination	442	442
Cross-examination	444	444
Contract No. 4188	445	445
Deposition of Joseph W. Furnivan	450	450
Direct examination	450	450
Cross-examination	453	453
Redirect examination	453	453
Re-cross-examination	455	455
Contract No. 4102	456	456
Contract No. 6889	463	463
Deposition of T. F. Mitchell	470	470
Direct examination	470	470
Cross-examination	473	473
Redirect examination	475	475
Re-cross-examination	477	477
Contract No. 4452	479	479
Deposition of Ramon Parea	484	484
Direct examination	484	484
Contract No. 5738	486	486
Deposition of D. M. Sutherland	492	492
Direct examination	492	492
Cross-examination	497	497
Deed No. 7875	497	497
Contract No. 7875	503	503
Deposition of Clarence T. Cleve	508	508
Direct examination	508	508
Cross-examination	510	510
Redirect examination	512	512
Deed No. 5880	513	513
Deposition of Peter Hamilton	519	519
Direct examination	519	519
Cross-examination	522	522
Redirect examination	527	527
Deed No. 3057	528	528
Deposition of Wm. Ferguson	533	533
Direct examination	533	533
Cross-examination	537	537
Redirect examination	541	541
Deed No. 3053	542	542
Deposition of Ira H. Bradshaw	548	548
Direct examination	548	548
Cross-examination	550	550
Redirect examination	552	552
Deed No. 5878	553	553

	Original.	Print.
Portions of record in case of Southern Pacific R. R. Co., etc.—Cont'd.		
Deposition of John Kenealy	559	559
Direct examination	559	559
Cross-examination	561	561
Deed No. 2839	562	562
Deed No. 2817	567	567
Stipulated evidence of Richard Dillon	573	573
Deposition of McHenry Pierce	574	574
Direct examination	574	574
Cross-examination	576	576
Deposition of Jonathan Garber	577	577
Direct examination	577	577
Deed No. 9205	578	578
Deposition of Nathan Cole, jr	584	584
Direct examination	584	584
Deed No. 4687	589	589
Deposition of J. Harps	594	594
Direct examination	594	594
Cross-examination	598	598
Deed No. 3863	600	600
Deposition of Pablo Lopez	606	606
Direct examination	606	606
Cross-examination	608	608
Deed No. 859	608	608
Deposition of J. M. Blanchard	614	614
Direct examination	614	614
Deed No. 2140	617	617
Deposition of Alexander Cook	623	623
Direct examination	623	623
Cross-examination	626	626
Redirect examination	627	627
Deed No. 3062	628	628
Deed from Peter Cook	634	634
Deposition of Jerome Madden	636	636
Direct examination	636	636
Recross-examination	638	638
Cross-examination resumed	642	642
Redirect examination resumed	643	643
Defendants' exhibits (patents) before the special examiner—No. 9	644	644
No. 10	653	653
No. 14	657	657
No. 18	662	662
Order submitting cause	668	669
Opinion	669	669
Decree	676	673
Petition for appeal	677	673
Order allowing appeal	678	673
Assignment of errors	679	674
Order as to record on appeal	683	675
Clerk's certificate	684	676
Citation and service	686	677

No. 484.

United States Circuit Court of Appeals, Ninth Circuit.

THE UNITED STATES,

Appellant,

vs.

SOUTHERN PACIFIC RAILROAD CO., et al., George Loomis, et al.,

Appellees.

Stipulation.

It is stipulated that the following designated parts of the record in this cause shall be printed, being necessary for consideration upon appeal in this court and in the Supreme Court, if appealed thereto:

All of the Transcript of Record filed in this Court and cause on October 28th, 1898, except pages I to IV inclusive, pages 1 to 3 inclusive, pages 31 to first ten lines of page 34 inclusive, pages 35 to 37 inclusive, and pages 78 to first five lines of page 80 inclusive; together with the following parts of the Transcript of Record heretofore filed upon the appeal of the defendants in the case of the Southern Pacific Railroad Company et al. vs. United States, being case No. 193 on the docket of this Court—to wit:

1.

Bill of Complaint filed May 17th, 1890, found in the transcript at pages 2 to 14, inclusive, and endorsements on page 23; omitting Exhibits.

2.

Subpoena and Return; pages 24 and 25.

3.

Amended Bill filed September 25th, 1891; commencing at page 69, on the fourth line from the bottom, and ending on page 88, together with endorsement on page 97; omitting Exhibit.

4.

Answer filed March 14th, 1892; pages 175 to 201, inclusive.

5.

Order of Court substituting Jackson A. Graves as a defendant; page 206.

6.

Supplemental and Amended Answer, filed June 12th, 1893; pages 211 to 249, inclusive; omitting Exhibits.

7.

Order of Court providing that former replication and testimony taken, shall stand; pages 209 and 210.

7½.

Decree of the Circuit Court, commencing on page 528.

8.

Deposition of D. G. Scofield; pages 1,268 to 1,322, inclusive, except that part stricken out with line, together with the following Exhibits offered therewith:

Defendants' Exhibit 103, being Declaration of Trust; pages 2,153 to 2,155, inclusive.

Defendants' Exhibit 104, being Contract No. 10,077, at pages 2,156 to 2,163, inclusive.

Defendants' Exhibit 105, being Deed No. 9,416, at pages 2,164 to 2,171.

Defendants' Exhibit 106, being Contract No. 10,320, pages 2,172 to 2,179, inclusive.

Defendants' Exhibit 107, being Contract No. 10,321, pages 2,180 to 2,187, inclusive.

Defendants' Exhibit 108, being Contract No. 10,322, pages 2,188 to 2,195, inclusive.

Defendants' Exhibit 109, being Contract No. 10,323, pages 2,196 to 2,202, inclusive.

Defendants' Exhibit 110, being Contrast No. 10,324, pages 2,203 to 2,209, inclusive.

Defendants' Exhibit 111, being Contract No. 10,325, pages 2,210 to 2,216, inclusive.

Defendants' Exhibit 112, being Contract No. 10,326, pages 2,217 to 2,223, inclusive.

Defendants' Exhibit 113, being Contract No. 10,327, pages 2,224 to 2,230, inclusive.

Defendants' Exhibit 114, being Contract No. 10,328, pages 2,231 to 2,237, inclusive.

Defendants' Exhibit 115, being Contract No. 10,329, pages 2,238 to 2,244, inclusive.

Defendants' Exhibit 116, being Contract No. 10,330, pages 2,245 to 2,251, inclusive.

Defendants' Exhibit 117, being Contract No. 10,331, pages 2,252 to 2,258, inclusive.

Defendants' Exhibit 118, being Contract No. 10,332, pages 2,259 to 2,264, inclusive.

Defendants' Exhibit 119, being Contract No. 10,333, pages 2,265 to 2,270, inclusive.

9.

Deposition of Jackson A. Graves, except that part

stricken out by line; pages 2,694 to 2,703, together with the following Exhibit offered therewith:

Defendants' Exhibit 44, being Deed No. 4,719, pages 3,499 to 3,503, inclusive.

Defendants' Exhibit 45, being Contract No. 4,720, pages 3,505 to 3,511, inclusive.

Defendants' Exhibit 46, being Contract No. 4,721, pages 3,513 to 3,519, inclusive.

Defendants' Exhibit 48, being Contract No. 4,723, pages 3,528 to 3,535, inclusive.

Defendants' Exhibit 49, being Deed to Graves, pages 3,537 to 3,543, inclusive.

10.

Deposition of M. W. Stimson, pages 2,863 to 2,868, inclusive, and the following Exhibits offered therewith:

Defendants' Exhibit 110, being Contract No. 8,861, pages 2,203 to 2,208, inclusive.

Defendants' Exhibit 111, being Contract No. 8,862, pages 2,210 to 2,216, inclusive.

11.

Deposition of W. E. McVay, pages 2,855 to 2,857, and the following Exhibit offered therewith:

Defendants' Exhibit 108, being Contract No. 8,863, pages 3,717 to 3,723, inclusive.

12.

Deposition of Will. D. Gould, pages 2,827 to 2,835, inclusive, except the last four lines, together with the following Exhibits offered therewith:

Defendants' Exhibit 91, being Contract No. 4,726, pages 3,621 to 3,627.

Defendants' Exhibit 93, being Deed No. 4,172, pages 3,628 to 3,634, inclusive, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered January 2nd, 1885, upon which contract one-fifth of the purchase price was paid upon execution of the contract, and thereafter seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

Defendants' Exhibit 94, being Deed No. 1,637, pages 3,635 to 3,641, inclusive.

Defendants' Exhibit 95, being Deed No. 1,096, pages 3,642 to 3,647, inclusive.

Defendants' Exhibit 96, being Contract No. 7,973, pages 3,649 to 3,652, inclusive.

Defendants' Exhibit 97, being Deed No. 7,872, pages 3,655 to 3,660, inclusive, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered July 28th, 1887, upon which contract one-fifth of the purchase price was paid upon execution of the contract, and thereafter seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

Defendants' Exhibit 99, being Deed No. 4,168, pages 3,669 to 3,674, inclusive, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered January 2nd, 1885, upon which contract one-fifth of the purchase price was paid upon execution of the contract, and there-

after seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

Defendants' Exhibit 101, being deed from James M. Hait, pages 3,680 to 3,681, inclusive.

Defendants' Exhibit 103, being deed from Mary L. Gould, page 3,684 to and including the first two lines on page 3,687.

13.

Deposition of M. D. Painter, pages 2,873 to 2,877, inclusive, together with the following Exhibit offered therewith:

Defendants' Exhibit 113, being Contract No. 4,724, pages 3,745 to 3,751, inclusive.

14.

Deposition of Stefano Cuneo, page 2,880 to and including ninth line on page 2,884, together with defendants' Exhibit 116, being Contract No. 4,487, offered therewith, pages 3,795 to 3,799, inclusive.

15.

Deposition of G. Suraco, pages 2,884 to 2,888, inclusive, together with defendants' Exhibit 117, being Contract No. 4,488, offered therewith, pages 3,802 to 3,806, inclusive.

16.

Deposition of Joseph W. Furnival, pages 2,888 to 2,895, inclusive, together with the following Exhibits offered therewith:

Defendants' Exhibit 118, being Contract No. 4,102, pages 3,808 to 3,811, inclusive.

Defendants' Exhibit 119, being Contract No. 6,009, commencing at page 3,824 of the Transcript.

17.

Deposition of Thomas F. Mitchell, pages 2,895 to 2,905, inclusive, together with defendants' Exhibit 122, being Contract No. 4,452, pages 3,840 to 3,844, inclusive.

18.

Deposition of Ramon Perea, pages 2,916 to 2,917, together with defendants' Exhibit 125, being Contract No. 5,738, pages 3,854 to 3,860, inclusive.

19.

Deposition of D. M. Sutherland, pages 2,932 to 2,938, inclusive, together with the following Exhibits offered therewith:

Defendants' Exhibit 131, being Deed No. 7,873, commencing at page 3,882 of the Transcript, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered July 28th, 1887; upon which contract one-fifth of the purchase price was paid upon execution of the contract, and thereafter seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

Defendants' Exhibit 132, being Contract No. 7,875, pages 3,888 to 3,892, inclusive.

20.

Deposition of Clarence T. Cleve, pages 673 to 678, inclusive, together with defendants' Exhibit 3, being Deed No. 5,880, pages 1,493 to 1,499, inclusive, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered August 27th, 1886; upon which contract one-fifth of

the purchase price was paid upon execution of the contract, and thereafter seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

21.

Deposition of Peter Hamilton, pages 679 to 687, inclusive, together with defendants' Exhibit 4, being Deed No. 3057, pages 1,500 to 1,505, inclusive, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered January 14th, 1884; the said contract being in similar form and upon similar plan of payment as that of defendants' Exhibit 104, being Contract No. 10,077, heretofore referred to.

22.

Deposition of William Ferguson, pages 688 to 697, inclusive, together with defendants' Exhibit 5, being Deed No. 3,053, pages 1,507 to 1,513, inclusive; the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered January 14th, 1884, and being in similar form and upon similar plan of payment as that of defendants' Exhibit 104, being Contract No. 10,077, heretofore referred to.

23.

Deposition of Ira H. Bradshaw, pages 705 to 710, inclusive, together with defendants' Exhibit 8, being Deed No. 5,878, pages 1,524 to 1,530, inclusive, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and deliv-

ered August 26th, 1886; upon which contract one-fifth of the purchase price was paid upon execution of the contract, and thereafter seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

24.

Deposition of John Knealy, pages 2,837 to 2,840, inclusive, together with the following exhibits offered therewith:

Defendants' Exhibit 104, being Deed No. 2,839, pages 3,689 to 3,693, inclusive.

Defendants' Exhibit 106, being Deed, commencing at page 3,702 of the Transcript;

Also stipulated evidence of Dillon, page 2,846, except that part stricken out.

25.

Depositionsof McH. Pierce and Jonathan Garber, pages 2,850 to 2,854, inclusive, together with defendants' Exhibit 107, being Deed No. 9,205, pages 3,709 to 3,714, inclusive, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered January 30th, 1888; upon which contract one-fifth of the purchase price was paid upon execution of the contract, and thereafter seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

26.

Deposition of Nathan Cole, Jr., pages 2,858 to 2,862, inclusive, together with defendants' Exhibit 109, being Deed No. 4,687, pages 3,724 to 3,729, inclusive; said deed

having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered June 24th, 1885; upon which contract one-fifth of the purchase price was paid upon execution of the contract, and thereafter seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

27.

Deposition of Jacob Harps, pages 2,910 to 2,915, inclusive, together with defendants' Exhibit 124, being Deed No. 3,863, pages 3,847 to 3,853, inclusive, the said deed having been made pursuant to a contract from said Southern Pacific Railroad Company, dated, executed and delivered August 14th, 1884; upon which contract one-fifth of the purchase price was paid upon execution of the contract, and thereafter seven per cent. per annum interest was paid until the date of the deed, when the balance of the purchase price was paid.

28.

Deposition of Pablo Lopez, pages 2,926 to 2928, inclusive, together with defendants' Exhibit 129, being Deed No. 859, pages 3,868 to 3,874, inclusive.

29.

Deposition of J. M. Blanchard, pages 2,929 to 2,931, inclusive, together with defendants' Exhibit 130, being Deed No. 2,140, pages 3,876 to 3,881, inclusive.

30.

Deposition of Alexander Cook, pages 698 to 704, with the following exhibits:

Defendants' Exhibit 6, being Deed No. 3,062, pages 1,514 to 1,519, inclusive.

Defendants' Exhibit 7, being Deed from Peter Cook, pages 1,521 to 1,522, inclusive.

31.

That part of the Deposition of Jerome Madden upon the following pages, except those parts thereof stricken out by line, to wit: Pages 711, 831, 832, 839 to 841, inclusive; 844, 846 to 851, inclusive; 915 to 917, inclusive.

32.

The following patents from the United States to the Southern Pacific Railroad Company: Patent No. 1, pages 1,531 to 1,540, inclusive; Patent No. 2, pages 1,542 to 1,547, inclusive; Patent No. 6, pages 1,550 to 1,554, inclusive; Patent No. 9, pages 1,558 to 1,564, inclusive.

33.

The United States does not question that part of the Decree of the Circuit Court confirming the title to certain lands in the following named defendants: Harry Chandler, Fred Chandler, Miguel Leonis, James B. Randol, A. W. Potts, J. F. Holbrook; and so much of said Decree as confirms to defendant Mary L. Gould the southeast Quarter of Section 25, Township 2 North, Range 13 West, S. B. M.; and the parts of said Decree from which the United States does not appeal are Items or Subdivisions 27, 31, 32, 33, and so much of 20 as is contained upon the last two lines of said item or subdivision.

34.

It is further stipulated that if it shall be discovered by either party, before the final submission of this cause in this Court or in the Supreme Court, if appealed thereto, that any evidence which he deems material has been

omitted from the printed record, such party may cause such omitted portion to be printed as a part of the printed record.

JOSEPH H. CALL,
Attorney for Appellant.
WM. SINGER, JR.,
Attorney for Appellees.

[Endorsed]: Stipulation as to printing Record.

Amended Citation.

UNITED STATES OF AMERICA—ss.

To George Loomis, the City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited; Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. N. Benham, Jessie Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred. Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward

G. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentress, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James H. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealy, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, John Robarts and George L. Mesnager, Executors of the last Will and Testament of Miguel Leonis, deceased; George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathison, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J.

R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Sherman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. . Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood and Jackson A. Graves,

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, on the 29th day of October A. D., 1898, pursuant to an order allowing an appeal, entered in the Clerk's office of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the

Southern District of California, from a final decree made and entered on the 5th day of August, 1898, in that certain cause being in equity No. 184, wherein The United States of America are complainants and appellants and you are defendants and appellees, to show cause, if any there be, why the said decree rendered against said appellants as in the said order allowing the appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 11th day of October A. D., 1898, and of the Independence of the United States the one hundred and twenty-third.

OLIN WELLBORN,

United States District Judge for the Southern District of California, and one of the Judges of the United States Circuit Court for the Southern District of California.

Office of the United States Marshal.
Northern District of California.

I hereby return that I received the within citation on the 13th day of October, 1898, and personally served the same on the 14th day of October, 1898, by delivering to and leaving a copy of the same with Wm. F. Herrin, "as attorney and counsel of record for the defendants named in the within citation."

JOHN H. SHINE,
United States Marshal.

San Francisco, Cal., October 15th, 1898.

[Endorsed]: Filed Oct. 18, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, to wit, the August term, A. D., 1897, of the Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Southern District of California, held at the Court-rromm in the City of Los Angeles on Friday, the seventh day of January, in the year of our Lord one thousand eight hundred and ninety-eight:

Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

No. 184.

THE UNITED STATES OF AMERICA, *Complainants,*

vs.

THE SOUTHERN PACIFIC RAILROAD Company, et al., *Defendants.*

Order on Filing and Entering Mandate of Supreme Court.

On motion of Joseph H. Call, Esq., Special Assistant United States Attorney for the Southern District of California, of counsel for complainant, it is ordered that the Mandate of the Supreme Court of the United States be and the same hereby is filed herein and entered in full on the minutes as follows, viz:

UNITED STATES OF AMERICA—ss.

The President of the United States of America:

To the Honorable the Judge of the Circuit Court of the United States for the Southern District of California.

Greeting: Whereas, lately in the United States Circuit

Court of Appeals for the Ninth Circuit, in a cause between The Southern Pacific Railroad Company, et al., appellants, and The United States, appellee, wherein the decree of the said United States Circuit Court of Appeals, entered in said cause on the 24th day of June, A. D. 1895, is in the following words, viz:

"This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged,and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed," as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the United States Circuit Court of Appeals in this cause be, and the same is hereby affirmed in all respects as to the Southern Pacific Railroad Company, as well as to the trustees in the mortgage executed by that company, and also as to the other defendants, subject, however, to the

right of the United States to proceed in the Circuit Court to a final decree as to these defendants.

And it is further ordered that this cause be, and the same is hereby remanded to the Circuit Court of the United States for the Southern District of California, October 18, 1897. You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed]: No. 184. Supreme Court of the United States, No. 71, October Term, 1897. The Southern Pacific R. R. Co., et al., vs. The United States. Mandate. Filed Jan. 7, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, to wit, the August term, A. D. 1897, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the Court-room in the City of Los Angeles on Friday, the seventh day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

No. 184.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD Company, et al.,
Defendants.

Order Dismissing Further Proceedings as to Certain Lands.

This cause coming on further to be heard in this the United States Circuit Court for the Southern District of California, in open Court, on this seventh day of January, 1898, in pursuance of a mandate of the United States Supreme Court, on file herein, and it having been provided in said mandate that the decree of the United States Circuit Court of Appeals for the Ninth Circuit affirming the decree of this Court, "be and the same is hereby affirmed in all respects as to the Southern Pacific Railroad Company, as well as to the trustees in the mortgage executed by that Company, and affirmed also as to the other defendants, subject, however, to the right of the United States to proceed in the Circuit Court to a final decree as to those defendants."

Now, therefore, in pursuance of a motion of Joseph H. Call, Esq., Special Assistant United States Attorney for the Southern District of California, of counsel for complainants, it is hereby ordered that further proceedings in this cause against the defendants other than defendants Southern Pacific Railroad Company, D. O. Mills and G. L. Lansing, trustees, be, and the same hereby are dis-

missed without prejudice as to all the lands described in the bill of complaint except as to the following described tracts and parcels of land:

The N. E. ¼ of the N. E. ¼, the S. ½ of the N. E. ¼, the N. W. ¼ of the N. W. ¼, the S. ½ of the N. W. ¼, and the S ½ of Section 15, Tp. 3 N., R. 16 W., S. B. M., containing 560 acres.

The N. E. ¼ of the N. W. ¼, and lots 1, 2, 3 and 4 of Section 19, Tp. 3 N., R. 15 W., S. B. M., containing 313.82 acres.

The S. ½ of the N. E. ¼ and fractional S. ½ of the N. W. ¼ of Section 7, Tp. 3 N., R. 15 W., S. B. M., containing 156.17 acres.

The S. E. ¼ of Section 7, Tp. 3 N., R. 15 W., S. B. M., containing 160 acres.

The fractional S. W. ¼ of Section 7, Tp. 3 N., R. 15 W., S. B. M., containing 153.48.

The N. E. ¼ of Section 7, Tp. 3 N., R. 16 W., S. B. M., containing 160 acres.

The N. W. ¼ of Section 7, Tp. 3 N., R. 16 W., S. B. M., containing 160 acres.

The S. E. ¼ of Section 7, Tp. 3 N., R. 16 W., S. B. M., containing 160 acres.

The S. W. ¼ of Section 7, Tp. 3 N., R. 16 W., S. B. M., containing 160 acres.

The W. ½ of the S. W. ¼ of Section 9, Tp. 3 N., R. 16 W., S. B. M., containing 80 acres.

Lots 1, 2, 3, and 4, of Section 17, Tp., 3 N., R. 16 W., S. B. M., containing 113.51 acres.

The N. E. ¼ of the N. E. ¼ of Sec. 21, Tp., 3 N., R. 16 W., S. B. M., containing 40 acres.

The fractional N. E. ¼ of Section 1, Tp. 3 N., R. 17 W., S. B. M., containing 152.05 acres.

The fractional N. W. ¼ of Section 1, Tp. 3 N., R. 17 W., S. B. M., containing 144.65 acres.

The S. E. ¼ of Section 1, Tp. 3 N., R. 17 W., S. B. M. containing 160 acres.

The S. W. ¼ of Section 1, Tp. 3 N., R. 17 W., S. B. M., containing 160 acres.

All of fractional Sections 3, 5, 7, and all of Section 9, the N. ½ and S. E. ¼ of Section 17, Tp. 5 N., R. 10 W., all of fractional Section 1, the fractional N. ½ and S. E. ¼ of Section 3, the E. ½ of Section 11, Tp. 5 N., R. 11 W., all of Sections 13, 15, 21, 23, 25, 27, the E. ½ of 33 and all of 35, Tp. 6 N., R. 11 W., S. B. M., containing acres.

All of fractional Sections 1, 3, and 5, all of Sections 9, 11, 13, 15, 17, 21, 23, 27, and 33, Tp. 6. N., R. 12 W., S. B. M., containing acres.

All of Sections 9, 17, 19, 21, and 29, fractional Section 31, all of Section 33, Tp. 7 N., R. 11 W. The S. W. ¼ of the N. E. ¼, the W. the W. ½ of the S. E. ¼ and the W. ½ of Section 11, all of Section 13, fractional Section 19, all of Sections 23, 25, 29, 33, and 35, Tp. 7 N., R. 12 W., all of Section 25, Tp. 7 N., R. 13 W., S. B. M., containing acres.

The S. W. ¼, the S. ½ of the S. E. ¼ of Section 29, all of Section 31, Tp. 6 N., R. 12 W., all of fractional Section 7, the N. W. ¼, the W. ½ of the S. W. ¼, the E. ½ of the S. E. ¼ of Section 17, the S. ½ of Section 15, all of 21, 23, and 25, Tp. 6 N ., R. 13 W., all of Section 1, the N. E. ¼ of Section 11, and the N. ½ of Section 13, Tp. 6 N., R. 14 W., S. B. M., containing 5200.83 acres.

The N. W. ¼ of Section 31, Tp. 2 N., R. 12 W., S. B. M., containing 160 acres.

The fractional N. E. ¼ of the N. E. ¼ of Section 1, Tp. 1 N., R. 13 W., S. B. M., containing 6.89 acres.

The N. W. ¼ of Section 25, Tp. 2 N., R. 13 W., S. B. M., containing 160 acres.

The E. ½ of the N. E. ¼, the N. E. ¼, the S. E. ¼ and lot 4 in the S. E. ¼ of Section 35, Tp. 4 N., R. 15 W., S. B. M., containing 161.15 acres.

The N. W. ¼ of Section 35, Tp. 7 N., R. 14 W., S. B. M., containing 160 acres.

The N. E. ¼ of Section 35, Tp. 7 N., R. 14 W., S. B. M., containing 160 acres.

The S. E. ¼ of Section 35, Tp. 7 N., R. 14 W., S. B. M., containing 160 acres.

The W. ½ of the N. E. ¼, Section 31, Tp. 2 N., R. 12 W., S. B. M., containing 80 acres.

All of fractional Section 33, Tp. 4 N., R. 15 W., S. B. M., containing 676.36 acres.

All of Sections 29, Tp. 4 N., R. 15 W., S. B. M., containing 640 acres.

All of fractional Section 19, Tp. 4 N., R. 15 W., S. B. M., containing 627 acres.

The N. E. ¼ of the N. E. ¼ and lots 1, 2, 3, 4, and 5 of Section 13, Tp. 4 N., R. 16 W., S. B. M., containing 160.64 acres.

The fractional E. ½ of Section 3, Tp. 4 N., R. 14 W., S. B. M., containing 322.95 acres.

All of Section 27, Tp. 5 N., R. 16 W., S. B. M., containing 640 acres.

The S. E. ¼ of Section 27, Tp. 5 N., R. 9 W., S. B. M., containing 160 acres.

The N. W. ¼ of Section 15, Tp. 5 N., R. 11 W., S. B. M., containing 160 acres.

All of Section 35, Tp. 7 N., R. 13 W., S. B. M., containing 640 acres.

All of Section 27, Tp. 7 N., R. 13 W., S. B. M., containing 640 acres.

All of Section 27, Tp. 7 N., R. 13 W., S. B. M., containing 640 acres.

All of Section 1, Tp. 6 N., R. 13 W., S. B. M., containing 640 acres.

The N. E. ¼ of Section 15, Tp. 5 N., R. 11 W., S. B. M., containing 160 acres.

All of Section 25, S. ½ of 35, in Tp. 6 N., R. 12 W., S. B. M., containing 960 acres.

The S. W. ¼ of Section 17, all of Section 19, all of Section 21, all of Section 27, in Tp. 5 N., R. 10 W., the S. W. ¼ of Section 3, all of fractional Section 5, all of Section 9, the W. ½ of Section 11, Tp. 5 N., R. 11 W., all of fractional Section 1, Tp. 5 N., R. 12 W., the W. ½ of 33, Tp. 6 N., R. 11 W., S. B. M., containing 5018.78 acres.

Lot 2 in the S. W. ¼, the E. ½ of the S. W. ¼ and W. ½ of the S. E. ¼, Section 31, Tp. 2 N., R. 12 W., S. B. M., containing 200.51 acres, the W. ½ of the S. E. ¼ of Section 25, Tp. 2 N., R. 13 W., S. B. M., containing 80 acres.

The E. ½ of the S. E. ¼ of Section 25, Tp. 2 N., R. 13 W., S. B. M., containing 80 acres.

The N. E. ¼ of Section 25, Tp. 2 N., R. 13 W., S. B. M., containing 160 acres.

The E. ½ of the S. E. ¼ of Section 31, Tp. 2 N., R. 12 W., S. B. M., containing 80 acres.

Lots3 and 4 and the S. ½ of the S. W. ¼ of Section 21, Tp. 2 N., R. 14 W., S. B. M., containing 129.86 acres.

The W. ½ of the S. W. ¼ of Section 25, Tp. 5 N., R. 13 W., S. B. M., containing 80 acres.

The N. ½ of Section 13, Tp. 5 N., R. 11 W., S. B. M., containing 320 acres.

The W. ½ of the N. W. ¼, the S. E. ¼ of the N. W. ¼, N. W. ¼ of the S. W. ¼ of Section 23, Tp. 4 N., R. 15 W., S. B. M., containing 160 acres.

The fractional S. W. ¼ of Section 21, Tp. 3 N., R. 15 W., S. B. M., containing 144.97 acres.

The W. ½ of the N. W. ¼ of Section 17, Tp. 2 N., R. 13 W., S. B. M., containing 80 acres.

Lots 1, 2, 5, 6, of Section 1, Tp. 2 N., R. 15 W., S. B. M., containing 162.54 acres.

The fractional S. W. ¼ of Section 17, Tp. 2 N., R. 13 W., S. B. M., containing 159.98 acres.

The W. ½ of the N. E. ¼ of Section 29, Tp. 5 N., R. 10 W., S. B. M., containing 80 acres.

The N. W. ¼ of Section 33, Tp. 2 N., R. 14 W., S. B. M., containing 160 acres.

The E. ½ of the N. E. ¼ and lots 1 and 2 in the N. E. ¼ of Section 29, Tp. 2 N., R. 14 W., S. B. M., containing 93.88 acres.

All of the aforesaid lands being north and west of the San Bernardino base and meridian, in the State of California.

And as to which said lands described as aforesaid the

United States elects to further proceed in said cause against the defendants therein other than defendants Southern Pacific Railroad Company, D. O. Mills and G. L. Lansing, trustees.

And Joseph H. Call, Esq., Special Assistant United States Attorney, and of counsel as aforesaid for complainants, having further moved for a further decree against the defendants in said cause other than defendants Southern Pacific Railroad Company and D. O. Mills and Gerrit L. Lansing, trustees, it is ordered that said motion be submitted on briefs to be filed as follows: on behalf of complainants within thirty (30) days; on behalf of defendants, within thirty (30) days thereafter, and on behalf of complainants in reply, within thirty (30) days thereafter.

I, WM. M. VAN DYKE, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court January 7th, 1898, in the cause entitled The United States of America, Complainant, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 184, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 5th day of August, A. D. 1898.

[Seal.] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company,

et al. Certified copy of Order dismissing further proceedings as to certain lands, without prejudice. Filed Aug. 5, 1898. Wm. M. Van Dyke, Clerk.

At a stated term, to wit, the January term, A. D. 1898, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the Court Room in the City of Los Angeles on Monday, the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

No. 184.

THE UNITED STATES OF AMERICA, *Complainants,*

vs.

THE SOUTHERN PACIFIC RAILROAD Company, et al., *Defendants.*

Order for Further Decree.

This cause having heretofore been submitted to the Court for its consideration and decision upon complainant's motion for a further decree, and the Court having duly considered the same, and being fully advised in the premises, it is now, on this 27th day of Juns, 1898, being a day in the January Term, A. D. 1898, of said Circuit Court of the United States for the Southern District of California, ordered that a further decree be entered

herein in accordance with the views expressed in the opinion of the Court now read and filed herein in open Court.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD Company, et al.,
Defendants.

Opinion of Court on Motion for Further Decree.

On the 3rd day of March, 1887, Congress enacted that the Secretary of the Interior immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants, theretofore unadjusted, made by it to aid in the construction of railroads. It directed the Secretary of the Interior, in the event it should appear, upon the completion of the respective adjustments, or sooner, that lands had been from any cause theretofore erroneously certified or patented by the United States to or for the use or benefit of any company claiming by or through or under grant from the United States to aid in the construction of railroads, to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and in the event such company should neglect or fail to so reconvey

such lands to the United States within ninety days after the making of the demand, it was made the duty of the Attorney-General to commence and prosecute, in the proper courts, the necessary proceedings to cancel all patents, certification or other evidence of title theretofore issued for such lands, and to restore the title thereto to the United States. Among the provisions of the act was also one to the effect that, as to such of the lands so erroneously certified or patented which had theretofore been sold by the grantee company to citizens of the United States, or to persons who had declared their intention to become such citizens, the person or persons so purchasing in good faith, and the heirs or assigns of such person or persons, should be entitled to the land so purchased, upon making proof of the fact of such purchase at the proper Land Office, within such time and under such rules as should be prescribed by the Secretary of the Interior, after the respective grants should have been adjusted; and that patents of the United States should issue therefor, and should relate back to the date of the original certification or patenting, and directing the Secretary of the Interior, on behalf of the United States, to demand payment from the company which had so disposed of such lands, of an amount equal to the government price for similar lands; and in case of neglect or refusal of such company to make payment as specified in the act, within ninety days after the demand, the Attorney-General was directed to cause suit or suits to be brought against such company for such amount; provided, that nothing in the act should prevent any purchaser of lands

erroneously withdrawn, certified or patented, from recovering the purchase money therefor from the grantee company, less the amount paid to the United State by such company, as by the act required. (Act of March 3, 1887, 24 Stat., 556.)

On the 17th day of May, 1890, the original bill in this suit was filed by the United States against the Southern Pacific Railroad Company, D. O. Mills and Gerritt L. Lansing, as the holders of a mortgage or deed of trust from the defendant railroad company upon the lands described in the bill to secure the payment of certain indebtedness of the defendant railroad company to them as trustees, and the City Brick Company. The purpose of the suit was to obtain a decree establishing and quieting the alleged title of the complainant to the lands therein described, as against the defendants, and enjoining them from cutting or removing from the lands any tree or wood. The lands constituting the subject of the suit are thus described in the bill:

"All the sections of land designated by odd numbers in townships 3 and 4 north, ranges 5, 6, and 7 west; township 1 north, ranges 16, 17 and 18 west; township 6 and the south ¾ of township 7 north, ranges 11, 12, 13, 14, 15, 16, 17, 18 and 19 west; also all the sections of land designated by odd numbers, as shown by the public surveys, embraced within the townships from number 2 north to number 5 north, both inclusive, and ranges from number 8 west to number 18 west, both inclusive, except sections 23 and 35 in township 4 north, range 15 west, and except sections 1, 11 and 13 in township 3 north, range 15 west;

also the unsurveyed lands within said area, which will be designated as odd numbered sections when the public surveys, according to the laws of the United States, shall be extended over such townships, all of the aforesaid lands being surveyed by San Bernardino Base and Meridian, and being situated within the State of California."

The bill alleged, among other things, that the defendant railroad company illegally and unjustly claimed the lands described under and by virtue of grants made to it by Congress, and further allege that while claiming and pretending to own the lands, by pretended conveyances executed in due form of law, pretended to sell and convey large portions thereof, and the wood and timber thereon, to various persons, unknown to the complainant, the names of which purchasers, together with the dates and amounts of such purchases, and the extent of whose claims, the complainant asked that the defendants be required to disclose, and that, when ascertained, such purchasers and adverse claimants be made parties defendant to the suit. The defendant railroad company, in its answer to the bill, averred that a large portion of the lands included in the bill had been theretofore conveyed to it by patents of the United States duly issued and delivered, and admitted that it had sold and conveyed its title to a portion of the lands described in the bill, and annexed to and made a part of its answer a certain exhibit, designated as exhibit "B", containing particular descriptions of all of the lands in suit which had been sold by the defendant railroad company prior to the commencement of the suit, including the names of the purchasers, the dates of the respective sales, and the amount for which the

lands were sold. Subsequently, the complainant filed an amended bill in which the purchasers thus disclosed were made parties defendant.

Thereafter the cause came on regularly for trial, which resulted in the entry of a decree on the 19th day of July, 1894, annulling all patents theretofore issued by the United States to the defendant railroad company under the grants made to it by Congress on July 27, 1866 (14 Stat., 292), and March 3, 1871 (16 Stat., 573), and by an amendatory or supplemental acts, for any and all of the lands embraced in the bill, and establishing the title thereto in the complainant, and quieting the same as against the defendant railroad company and its defendant mortgagees; but providing that the decree should not "in any wise affect any right which the defendants or any of them, other than the said Southern Pacific Railroad Company, now have or may hereafter acquire in, to or respecting any of the lands" involved in the suit, by virtue of the Adjustment Act of March 3, 1887. Upon appeal to the Supreme Court, the decree was "affirmed in all respects as to the Southern Pacific Railroad Company, as well as to the trustees of the mortgage executed by that Company, and affirmed also as to the other defendants, subject, however, to the right of the Government to proceed in the Circuit Court to a final decree as to those defendants" (168 U. S., 1, 66). Intermediate the taking of the appeal and the decision thereof by the Supreme Court, Congress passed the Act of March 2, 1896 (29 Stat., 42), which not only prescribed periods within which suits to vacate and annul patents theretofore or thereafter issued should be brought, but which also provided that "no

patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed." After the filing of the mandate of the Supreme Court herein, and on the 7th day of January, 1898, on motion of counsel for the complainant further proceedings in the suit against all of the defendants other than the Southern Pacific Railroad Company and its mortgagees, were dismissed, without prejudice, as to all the lands described in the bill, except certainspecified tracts aggregating 47,945.52 acres of land. In respect to these specific tracts, counsel for the Government moved for further decree in accordance with themandateof the Supreme Court, which motion has been argued and submitted by counsel for the respective parties, and is now for determination. Some of the specific tracts embraced by the motion have been patented by the United States to the defendant railroad company, and for some of them no patents have been issued; some of each of these classes of the land now under consideration the defendant railroad company has contracted to sell to individual defendants, executing in each instance an executory contract of sale, and receiving from the purchaser a part of the purchase money; some it, in like manner, contracted to sell to a foreign corporation, styled Atlantic & Pacific Fibre & Importing Company, receiving therefrom the purchase money in full, and for some of each class the railroad company has executed deeds to the respective purchasers, having received therefrom the full amount of the purchase money. All of the lands covered by the pending motion are included in one or the other of these

classes. Most of the purchasers from the railroad company of the lands under consideration are citizens of the United States or have declared their intention to become such; one was the foreign corporation mentioned, whose interest in the tracts purchased by it was, however, subsequently assigned and conveyed, for value, to the defendGraves, also shown to be a citizen of the United States; a few of such purchasers are not shown by the evidence to be citizens or to have declared their intention to become such.

Enough has been stated to enable the Court to indicate to the parties in interest the lines upon which the further decree must proceed, and the reasons therefor.

The act of March 2, 1896, put an end to all question in relation to all patents for lands held by a bona fide purchaser from the railroad company, regardless of the citizenship of such purchaser; for it in express terms declares that no such patent shall be vacated or annulled, and further expressly confirms the right and title of such purchaser. (United States vs. Winona, etc. R. R., 165 U. S., 463, 476, 477.) This act, although passed after the entry of the original decree in this cause in this court, is to be considered and applied. In the case last cited, the Supreme Court said:

"It is true this act (the act of March 2, 1896, was passed after the commencement of this suit—indeed, after the decision by the Court of Appeals,—but it is none the less an act to be considered. There can be no question of the power of Congress to terminate, by appropriate legislation, any suit brought to assert simply the rights of the Government. This suit was instituted by the Attorney

General in obedience to the direct command of Congress as expressed in the act of 1887, and Congress could at any time prior to the final decree in this Court direct the withdrawal of such suit; and it accomplishes practically the same result when, by legislation within the unquestioned scope of its powers, it confirms in the defendants the title to the property which it was the purpose of the suit to recover. So, if this act of 1896, taken by itself alone, or in conjunction with preceding legislation, operates to confirm the title apparently conveyed by the certification to the State for the benefit of the railroad company, that necessarily terminates this suit adversely to the Government, and compels an affirmance of the decisions of the lower courts without the necessity of any inquiry into the reasons advanced by those courts for their conclusions. We are of the opinion that Congress intended by the sentence we have quoted from the act of 1896 to confirm the title which in this case passed by certification to the State. It not only declares that no patents to any lands held by a bona fide purchaser shall be vacated or annulled, but it confirms the right and title of such purchasers. Given a bona fide purchaser, his right and title is confirmed, and no suit can be maintained at the instance of the Government to disturb it."

The Cupreme Court, in its opinion in the present case, held that the effect of the decree heretofore entered herein was to leave undetermined the question whether the defendants who claimed under the Southern Pacific Railroad Company are protected by the act of March 3, 1887, 24 Stat. 556, "or any other act of Congress," and its decree of affirmance was made subject to the right of the Gov-

ernment to proceed in this Court to a final decree as to those defendants (168 U. S., 66). This is the construction which the Supreme Court has in this case put upon the decree heretofore entered herein, and by which this Court must, of course, be governed. The Government has elected to proceed to a final decree herein as to the claims of those defendants in respect to certain specified tracts of lands embraced by its original bill, and, on motion of its counsel, has dismissed, without prejudice, further proceedings against the defendants other than the Southern Pacific Railroad Company, D. O. Mills and G. L. Lansing, Trustees, as to the balance of the lands. For such of the lands embraced by the present proceedings as have been patented by the United States, and been purchased by the defendants in good faith and for value, the latter are entitled to a decree against the complainant and confirming their title; for Congress has by its act of March 2, 1896, declared that no such patent shall be vacated or annulled, and has expressly confirmed the right and title of such purchasers. That act, although passed after the entry of the decree herein of July 19, 1894, is applicable to the present status of the case, and is to be given effect. It was so expressly held by the Supreme Court in its opinion in this very case, as well as in the Winona case above referred to. In providing, therefore, as must be done, in the further decree now to be entered, in order to prevent an otherwise apparent inconsistency, that the decree of July 19, 1894, shall not be construed to enjoin the defendant bona fide purchasers of such of the lands now before the Court as have been patented by the United States from asserting title thereto, the Court is but carrying out

the decision of the Supreme Court in the present case, and giving effect to its mandate.

Nor is the character of the defendants as bona fide purchasers to be tested by the meaning of that term as ordinarily understood in equitable proceedings. In the case just cited the Supreme Court said:

"It is earnestly contended by the government that the present holders of the title are not 'bona fide purchasers'; that that term has a fixed and well-defined meaning, as announced in the frequent decisions of this and other Courts; that, as said in 2 Pom. Eq. Jur., Sec. 745, 'the essential elements which constitute a bona fide purchaser are, therefore, three— a valuable consideration, the absence of notice, and presence of good faith'; United States vs. California, etc. Land Company, 140 U. S., 31, 42; that while two of these essential elements may be found, to-wit, a valuable consideration, and the presence of good faith, the third, the absence of notice, is lacking; that all men are conclusively presumed to know the law, and that as the true rule of construction in reference to these grants was laid down by this Court, the purchasers were bound to know such true rule; that the records of the Land Office disclose the existence of these homestead entries and preemption filings, and, therefore, they who purchased from the railroad company knew, or at least were chargeable with knowledge of the fact that those lands could not rightfully have been certified to the railroad company, but were excepted from the terms of grant, and in fact remained the property of the Government. It is further insisted that, as Congress in this statute used this well understood expression, it intended only

the protection of such parties as came within the scope of this settled meaning. It is said that only cases to be covered by this provision were those in which the State or the railroad company by presentation to the Land Office, before the filing of the map of definite location, of a forged relinquishment by the preemptor, or one having made a homestead entry, or by some other fraudulent representations, secured a certification or patent to the tracts, and thereafter sold and conveyed to one who purchased in ignorance of the fraud.

We are unable to agree with this contention of counsel, for several reasons: In the first place, the situation as it was known to exist makes against any such narrow construction. While instances of such fraudulent conduct on the part of the State to which the lands were certified, or the company to which the lands were patented, might exist, yet in the nature of things they would be few and hardly worth the special notice of Congress, while on the other hand the fact that there had been a difference between the Land Department and the Courts, one construction obtaining in the former prior to the decisions by the latter, and the further fact that by this difference of construction many tracts had been erroneously certified or patented, must have been well known to Congress, and naturally therefore a subject for its legislation. Further, there was no need of any legislation to protect a 'bona fide purchaser'. This had been settled by repeated decisions of this Court. United States vs. Burlington & Missouri River Railroad Company, 98 U. S., 334, 342; Colorado Coal Company vs. United States, 123 U. S., 307, 313—reaffirmed in United States vs. California, etc. Land

Company, 148 U. S., 31, 41. For in each of those cases, it was decided that, although a patent was fraudulently and wrongfully obtained from the Government, if the land conveyed was within the jurisdiction of the Land Department, the title of a bona fide purchaser from the patentee could not be disturbed by the Government, so that this provision was absolutely unnecessary if that which is now claimed by counsel for the Government is all that was intended by Congress. We do not mean to assert that because legislation to cover such a contingency was unnecessary, therefore, the language used by Congress necessarily implies something other and different, because, of course, it may have been that Congress intended nothing but a simple declaration of the law as it was known to exist. At the same time, the fact that under one construction it was needless, raises a presumption that something more was intended, and that Congress had in view the protection of other parties than were already protected by general law.

But we need not rest on these inferences and presumptions. Other provisions of the acts of 1887 and 1896 make clear the intent of Congress. Section 3 of the act of 1887 provides that if the homestead or pre-emption entry of any bona fide settler has been erroneously cancelled on account of any railroad grant it may be reinstated, provided he has not located another claim or made an entry in lieu of the one so cancelled, and also did not voluntarily abandon such entry. By this section Congress provided for the reinstating of the title of one deprived thereof by an erroneous ruling of the Land Department, but, at the same time, limited the right of reinstating to cases in

which the original entryman had not voluntarily abandoned his entry, or had not since that time made a new entry. In other words, it was limiting the restoration of the title of the original entryman to cases in which he had a continuing and present equitable right to recognition. As to all other cases, Congress reserved the determination of the equities between the Government, the railroad company and purchasers from the latter, and in subsequent sections it made provision for the adjustment of such equities.

Section 4 of the same act, expressly referring to all other lands erroneously certified or patented to any railroad company, provides that citizens who had purchased such lands in good faith should be entitled to the lands so purchased and to patents therefor issuing directly from the United States, and that the only remedy of the Government should be an action against the railroad company for the Government price of similar lands. It will be observed that this protection is not granted to simply bona fide purchasers (using that term in the technical sense), but to those who have one of the elements declared to be essential to a bona fide purchaser, to wit, good faith. It matters not what constructive notice may be chargeable to such a purchaser if, in actual ignorance of any defect in the railroad company's title and in reliance upon the action of the Government in the apparent transfer of title by certification or patent, he has made an honest purchase of the lands. The plain intent of this section is to secure him the lands, and to reinforce his defective title by a direct patent from the United States, and to leave to the Government a simple claim for money

against the railroad company. It will be observed that the technical term 'bona fide purchaser' is not found in this section, and while it is provided that a mortgage or pledgee to the benefit of the act, it does secure to every one who in good faith has made an absolute purchase from a railroad company, protection to his title irrespective of any errors or mistakes in the certification or patent.

Section 5 of the same act applies to cases in which no certification or patent has issued, and yet the lands sold by the railroad company are the numbered sections prescribed in its grant and coterminous with the constructed portions of its road, and it is there provided that where the lands so sold by the company 'are for any reason excepted from the operation of the grant to said company,' the purchaser may obtain title directly from the Government by paying to it the ordinary Government price of such lands. It is true the term used here is 'bona fide purchaser,' but it is a bona fide purchaser from the company, and the description given of the lands, as not conveyed and 'for any reason excepted from the operation of the grant,' indicates that the fact of notice of defective title was not to be considered fatal to the right. Congress attempted to protect an honest transaction between a purchaser and a railroad company, even in the absence of a certification or patent. These being the provisions of the act of 1887, the act of 1896, confirming the right and title of a bona fide purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest

sense a 'bona fide purchaser,' has nevertheless purchased in good faith from the railroad company."

What was here said by the Supreme Court also disposes, adversely to it, of the contention made on behalf of the complainant to the effect, that the purchasers from the defendant railroad company were bound to know the law, and were therefore to be charged with knowledge that the true construction of the grants made by Congress to the Atlantic & Pacific Railroad Company and the defendant railroad company, respectively, excluded from the latter all lands at any time embraced by the former.

From the evidence in the case, it does not admit of doubt that the respective purchasers of the land now under consideration bought in good faith and in the expectation of receiving through the railroad company, title to the lands purchased. This is shown in part by the contracts and deeds introduced in evidence. That, in many instances, only a part of the purchase money has been actually paid is, in my opinion, wholly immaterial. As was well said by the Secretary of the Interior in the recent case of Schneider vs. Linkswiller and others decided March 18, 1898, a copy of whose opinion has been presented with the briefs: "It is a part of the history of the times that the land grant companies had sold much of the land within the limits of the grants to immigrants and others, and held out as inducements to such parties contracts giving long credit, and requiring moderate annual payments. It was through this policy that vast bodies of land in the public-land states were disposed of to actual settlers, and many communities established and built up. This was well known to Congress at the time

of the passage of said act and it seems certain that such contracts, whether spoken of as sales or purchased, whether fully performed or only partially performed, constitute a part of the subject with which Congress was dealing, and the rights of the so-called purchaser thereunder are within the protection of the statute, if acquired in good faith. If there be any doubt about the correctness of this view of the purpose and intent of the act of 1887, it is removed by a perusal of the amendment thereto of February 12, 1896 (29 Stat., 6), wherein Congress expressly recognizes partly performed contracts of purchase, like that of Schneider, as constituting a purchase within the meaning of the law."

I am also of opinion that the legislation of Congress under consideration is not to be limited to purchasers who bought prior to the respective enactments. The legislation was remedial in its nature, and therefore to be liberally construed. Attorney General Garland, in an opinion given by him in response to certain questions propounded respecting the act of 1887, said: "The whole scope of the law from the second to the sixth section, inclusive, is remedial. Its intent is to relieve from loss settlers and bona fide purchasers, who, through the erroneous or wrongful disposition of the lands in the grants, by the officers of the Government or by the railroads, have lost their rights or acquired equities, which in justice should be recognized. * * * The whole remedial part of the law was passed with the recognition of the fact that the railroad companies had sold lands to which they had no just claims."

The adjustment directed and provided for, of the vari-

ous grants, necessarily required time, and a great deal of it. Until adjusted and settled, the conflicting claims of the Government, on the one side, and of the railroad companies and the purchasers from them, on the other, continued. Every such purchaser who bought for value and in the honest belief that he would thereby acquire through the grantee company the Government title to the land so purchased, is, in my opinion, entitled to the benefit of this remedial legislation, regardless of the date of his purchase, provided he possesses the necessary qualification in respect to citizenship. And this view is in accord with the rulings of the Secretary of the Interior. (Instructions of Secretary Noble to the Commissioner of the General Land Office, August 30, 1890, Vol. XI, L. D., 229; Sethman vs. Clise, XVII L. D., 311; Andrus vs. Blach, XXII L. D., 241.) As against such of the defendant purchasers as have failed to prove their citizenship, or intention to acquire citizenship, the complainant is entitled to a decree quieting its title. The defendant Graves is shown by the evidence to be a citizen of the United States, and to have purchased for value those of the lands in controversy claimed by him which have not been patented; but his immediate grantor, who was the purchaser from the railroad company, was a foreign corporation, and, therefore, not entitled to the benefits of the act of March 7, 1887. The Secretary of the Interior has held in several cases that if the applicant is a bona fide purchaser, and himself possesses the requisite qualifications as to citizenship, it is immaterial whether the original purchaser from the railroad company, through whom he claims, was a citizen or had declared his intention to

become such. (Instructions and Decisions of the Secretary of the Interior, supra.) In view of the nature of the legislation in question, and of the liberal rule of construction that should be accorded it, I am not prepared to differ from the construction thus adopted by the officers of the land department, especially in view of the amendatory and supplemental act of Congress of March 2, 1896, under which, as has been seen, bona fide purchasers for value of such lands as have been patented to the railroad companies by the United States, are confirmed in their purchases, even though they be aliens.

A further decree will be entered in the case in accordance with the views above expressed.

ROSS,
Circuit Judge.

[Endorsed]: No. 184, U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. Southern Pacific Railroad Company et al. Opinion of the Court on Motion for further Decree. Filed June 27, 1898, Wm. M. Van Dyke, Clerk.

Order Suspending Operation of Final Decree.

Pursuant to the Mandate of the Supreme Court of the United States, this Court having proceeded to a further decree, now on this day a Final Decree is signed and filed in open court and directed to be entered herein; and thereupon, on motion of Joseph H. Call, Esq., Special Assistant U. S. Attorney, of counsel for complainants, it

is ordered that the operation of said decree be and hereby is suspended for thirty (30) days.

On the 24th day of August, 1894, an appeal by defendants was taken from the foregoing final decree entered on the 19th day of July, 1894, to the United States Circuit Court of Appeals for the Ninth Circuit, and thereafterwards from the decree of the said United States Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the United States.

On the 7th day of January, 1898, the Mandate of the Supreme Court of the United States was filed and entered herein, and is hereto annexed.

On the 7th day of January, 1898, the Court made and entered herein an order that further proceedings in this cause against the defendants other than defendants Southern Pacific Railroad Company, D. O. Mills and G. L. Lansing, trustees, be dismissed without prejudice as to certain lands, a copy of which order is hereto annexed.

On the 5th day of August, 1898, pursuant to the mandate of the Supreme Court of the United States, a final decree was signed, filed, entered, and recorded herein, and is hereto annexed.

Case No. 184.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMpany, and D. O. Mills and Garrit L. Lansing, trustees; the City Brick Company, Atlantic and

Pacific Fibre Importing and Manufacturing Company, Limited; Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. N. Benham, Jessie Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred. Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius

Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, John Robarts and George L. Mesnager, Executors of the last Will and Testament of Miguel Leonis, deceased; George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathison, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George

H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, Gorge W. Seifert, Luciana Sequois, Henry C. Sherman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood and Jackson A. Graves,

Defendants.

Decree.

This cause coming on further to be heard in open Court this 5th day of August, A. D. 1898, in pursuance of a mandate of the Supreme Court of the United States, filed herein on January 7th, A. D. 1898, by which mandate it was adjudged that the decree of this Court passed and entered on the 19th day of July, A. D. 1894, "be, and the same is, hereby affirmed in all respects as to the Southern

Pacific Railroad Company, as well as to the trustees in the mortgage executed by that company, and affirmed also as to the other defendants, subject, however, to the right of the United States to proceed in the Circuit Court to a final decree as to those defendants."

And whereas, on said January 7, 1898, upon motion of Mr. Joseph H. Call, Special Assistant United States Attorney, further proceedings in this cause against the defendants other than defendants Southern Pacific Railroad Company and D. O. Mills and G. L. Lansing, trustees, were dismissed without prejudice as to certain tracts of land, and at the same time the United States, by their said attorney, moved for a further decree against the defendants other than said defendants Southern Pacific Railroad Company and D. O. Mills and Gerrit L. Lansing as to the balance of the lands described in the bill of complaint and the matter of said motion having come on to be heard, and Mr. William F. Herrin and Mr. William Singer, Jr., having appeared as counsel for the defendants, and Mr. Joseph H. Call having appeared as counsel for the United States, and the matter having been argued and submitted to the Court, and the Court being duly advised in the premises, doth now order, adjudge, and decree as to the rights and interests of defendants other than Southern Pacific Railroad Company and D. O. Mills and Gerrit L. Lansing, trustees, as follows:

First. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant George Loomis, his heirs, executors, or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant George Loomis is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company, within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5, of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

N. E. ¼ of N. E. ¼, S. ½ of N. E. ¼, N. W. ¼ of N. W. ¼, S. ½ of N. W. ¼, and S. ½ of Sec. 15, Tp. 3 N., R. 16 W.

S. ½ of N. E. ¼, and frac. S. ½ of N. W. ¼ of Sec. 7, Tp. 3 N., R. 15 W.

S. E. ¼ of Sec. 7, Tp. 3 N., R. 15 W.

Frac. S. W. ¼ of Sec. 7, Tp. 3 N., R. 15 W.

N. E. ¼ of Sec. 7, Tp. 3 N., R. 16 W.

N. W. ¼ of Sec. 7, Tp. 3 N., R. 16 W.

S. E. ¼ of Sec. 7, Tp. 3 N., R. 16 W.

S. W. ¼ of Sec. 7, Tp. 3 N., R. 16 W.

W. ½ of S. W. ¼ of Sec. 9, Tp. 3 N., R. 16 W.

Lots 1, 2, 3, and 4 of Sec. 17, Tp. 3 N., R. 16 W.

N. E. ¼ of N. E. ¼ of Sec. 21, Tp. 3 N., R. 16 W.

Frac. N. E. ¼ of Sec. 1, Tp. 3 N., R. 17 W.

Frac. N. W. ¼ of Sec. 1, Tp. 3 N., R. 17 W.

S. E. ¼ of Sec. 1, Tp. 3 N., R. 17 W.

S. W. ¼ of Sec. 1, Tp. 3 N., R. 17 W.

Second. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of the defendant the Pacific Coast Oil Company, its heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Pacific Coast Oil Company is now and was on March 3, 1887, a citizen of the United States, and that it is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5 of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

N. E. ¼ of N. W. ¼, and lots 1, 2, 3, and 4 of Sec. 19, Tp. 3 N., R. 15 W.

Third. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Jackson A. Graves, his heirs, executors, or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Jackson A. Graves is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved

March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5, of said Act of Congress of March 3, 1887, said land being described as follows, to wit:

All of frac. Sections 3, 5, and 7; all of Sec. 9; N. ½ and S. E. ¼ of Sec. 17; Tp. 5 N., R. 10 W. All of frac. Sec. 1; frac. N. ½ and S. E. ¼ of Sec. 3; E. ½ of Sec. 11, Tp. 5 N., R. 11 W. All of Sections 13, 15, 21, 23, 25, and 27; E. ½ of Sec. 33; all of Sec. 35; Tp. 6 N., R. 11 W.

All of frac. Sections 1, 3, 5, and all of Sections 9, 11, 13, 15, 17, 21, 23, 27 and 33, Tp. 6 N., R. 12 W.

S. ½ of Sec. 9; all of Sections 17, 19, 21 and 29; frac. Sec. 31, and all of Sec. 33, Tp. 7 N., R. 11 W. W. ½ of S. E. ¼ and S. W. ¼ of Sec. 11; all of Sec. 13; frac. Sec. 19; all of Sections 23, 25, 29, 33, and 35, Tp. 7 N., R. 12 W. All of Sec. 25, Tp. 7 N., R. 13 W.

Fourth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Mrs. Mary L. Gould, her heirs, executors, or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Mrs. Mary L. Gould is now and was on March 3, 1887, a citizen of the United States, and that she is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved

March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5 of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

N. W. ¼ of Sec. 31, Tp. 2 N., R. 12 W.

Fifth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant M. W. Stimson, his heirs, executors, or assigns to purchase said land upon certain terms and conditions, viz.:

That defendant M. W. Stimson is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5 of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

N. E. ¼ of Sec. 35, Tp. 7 N., R. 14 W.

S. E. ¼ of Sec. 35, Tp. 7 N., R. 14 W.

Sixth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of Charles M. Stimson, his heirs, executors, or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Charles M. Stimson is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5 of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

N. W. ¼ of Sec. 35, Tp. 7 N., R. 14 W.

Seventh. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Daniel D. Brunk, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Daniel D. Brunk is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjust-

ment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5 of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

W. ½ of N. E. ¼ of Sec. 31, Tp. 2 N., R. 12 W.

Eighth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Stephen Cuneo, his heirs, executors, or assigns, to purchase said land upon certain terms and condition, viz.:

That defendant Stephen Cuneo is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5 of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

All of frac. Sec. 33, Tp. 4 N., R. 15 W.

Ninth. That the United States are the owners by title in fee simple absolute of the following described land,

subject to the right of defendant Gianbatista Suraco, otherwise known as Gianbatista Sinaco, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Gianbatista Suraco is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5 of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

All of Sec. 29, Tp. 4 N., R. 15 W.

Tenth. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant William H. Carlson, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant William H. Carlson is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the con-

struction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying with the provisions of Section 5 of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

All of frac. Sec. 19, Tp. 4 N., R. 15 W.

N. E. ¼ of N. E. ¼ and lots 1, 2, 3, 4 and 5 of Sec. 13, Tp. 4 N., R. 16 W.

Eleventh. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Thomas F. Mitchell, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Thomas F. Mitchell is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying wih the provisions of Section 5, of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

Frac. E. ½ of Sec. 3, Tp. 4 N., R. 14 W.

Twelfth. That the United States are the owners by

title in fee simple absolute of the following described land, subject to the right of defendant Ramon Perea, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Ramon Perea is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of Section 5 of the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States, and secure a patent from the United States thereto, upon complying wih the provisions of Section 5, of said Act of Congress of March 3, 1887; said land being described as follows, to wit:

All of Sec. 27, Tp. 5 N., R. 16 W.

Thirteenth. That defendant Jackson A. Graves is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of

said defendant, and of his heirs, grantees and assign to said lands is hereby confirmed; said lands being described as follows, to wit:

S. W. ¼ of Sec. 17; all of frac. Sec. 19; all of Sec. 21; all of Sec. 27; Tp. 5 N., R. 10 W. S. W. ¼ of Sec. 3; all of frac. Sec. 5; all of Sec. 9; W ½ of Sec. 11; Tp. 5 N., R. 11 W. All of frac. Sec. 1, Tp. 5 N., R. 12 W.

W. ½ of Sec. 33, Tp. 6 N., R. 11 W.

Fourteenth. That defendant D. M. Sutherland is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

S. E. ¼ of Sec. 27, Tp. 5 N., R. 9 W.

W. ½ of N. E. ¼ of Sec. 29, Tp. 5 N., R. 10 W.

Fifteenth. That defendant Clarence T. Cleve is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide

for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

N. W. ¼ of Sec. 15, Tp. 5 N., R. 11 W.

Sixteenth. That defendants Peter Hamilton and Mrs. Thomas Allison are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes," said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

All of Sec. 35, Tp. 7 N., R. 13 W.

Seventeenth. That defendants William Ferguson and James Hamilton, are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the

meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith; the title of defendants and of their heirs, grantees and assigns to said land is hereby confirmed; said lands being described as follows, to wit:

All of Sec. 27, Tp. 7 N., R. 13 W.

Eighteenth. That said defendant Ira H. Bradshaw is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

N. E. ¼ of Sec. 15, Tp. 5 N., R. 11 W.

Nineteenth. That said defendants Peter Cook, M. L. Wicks, and Alexander Cook are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands within the mean-

ing of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Sec. 1, Tp. 6 N., R. 13 W.

Twentieth. That defendant Mary L. Gould is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of her heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Lot 2 in S. W. $\frac{1}{4}$; E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 31, Tp. 2 N., R. 12 W.

W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 25, Tp. 2 N., R. 13 W.

E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 25, Tp. 2 N., R. 13 W.

Twenty-first. That defendant Will D. Gould is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed, said lands being described as follows, to wit:

N. E. ¼ of Sec. 25, Tp. 2 N., R. 13 W.

N. W. ¼ of Sec. 25, Tp. 2 N., R. 13 W.

Twenty-second. That defendant James M. Hait is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant, and of his heirs, grantees, and assigns, to said

land is hereby confirmed; said lands being described as follows, to wit:

E. ½ of S. E. ¼ of Sec. 31, Tp. 2 N., R. 12 W.

Twenty-third. That defendants Richard Dillon and John Kenealy are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes;" said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendants having purchased said land from and under said Company in good faith; the title of said defendants, and of their heirs, grantees, and assigns, to said lands is hereby confirmed; said lands being described as follows, to wit:

Lots 3 and 4 and S. ½ of S. W. ¼ of Sec. 21, Tp. 2 N., R. 14 W.

Twenty-fourth. That defendants J. Garber and McH. Pierce are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Rail-

road Company, and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

W. ½ of S. W. ¼ of Sec. 25, Tp. 5 N., R. 13 W.

Twenty-fifth. That defendant Nathan Cole, Jr., is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant, and of his heirs, grantees, and assigns, to said land is hereby confirmed; said lands being described as follows, to wit:

N. ½ of Sec. 13, Tp. 5 N., R. 11 W.

Twenty-sixth. That defendant Jacob Harps is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by

the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant, and of his heirs, grantees, and assigns, to said land is hereby confirmed; said lands being described as follows, to wit:

Frac. S. W. ¼ of Sec. 21, Tp. 3 N., R. 15 W.

Twenty-seventh. That defendants A. W. Potts and J. F. F. Holbrook are bona fide purchasers from and under de- Holbrook are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

W. ½ of N. W. ¼ of Sec. 17, Tp. 2 N., R. 13 W.

Twenty-eighth. That defendant Pablo Lopez is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be

brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant, and of his heirs, grantees, and assigns, to said land is hereby confirmed; said lands being described as follows, to wit:

Lots 1, 2, 5 and 6 of Sec. 1, Tp. 2 N., R. 15 W.

Twenty-ninth. That defendant Jesse Martin Blanchard is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith; the title of said defendant, and of his heirs, grantees, and assigns, to said land is hereby confirmed; said lands being described as follows, to wit:

Frac. S. W. $\frac{1}{4}$ of Sec. 17, Tp. 2 N., R. 13 W.

Thirtieth. That defendant Richard Dillon is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of Section 4 of said Act of Congress of March 3, 1887, and within the meaning of the Act

of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to the said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said Company in good faith; the title of said defendant and of his heirs, grantees, and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

E. ½ of N. E. ¼ and lots 1 and 2 in N. E. ¼ of Sec. 29, Tp. 2 N., R. 14 W.

Thirty-first. That defendants Harry Chandler and Fred Chandler are bona fide purchasers from and under defendant The Southern Pacific Railroad Company, of the following described lands within the meaning of Section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said Company in good faith; the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

N. W. ¼ of Sec. 33, Tp. 2 N., R. 14 W.

Thirty-second. That Miguel Leonis, lately deceased, was a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following de-

scribed lands, within the meaning of Section 4 of said act of Congress of March 3, 1887, and within the meaning of said act of Congress of March 2, 1896, said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said Miguel Leonis having purchased said land from and under said Company, in good faith; the title of said Miguel Leonis, and of his heirs, executors and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

S. ½ of S. E. ¼ and S. W. ¼ of Sec. 29. All of Sec. 31, Tp. 6 N., R. 12 W. All of frac. Sec. 7, S. ½ of Sec. 15; N. W. ¼; W. ½ of S. W. ¼ and E. ½ of S. E. ¼ of Sec. 17. All of Sections 21, 23, and 25, Tp. 6 N., R. 13 W. All of Sec. 1; N. E. ¼ of Sec. 11; and N. ½ of Sec. 13, Tp. 6 N., R. 14 W.

Thirty-third. That defendant James B. Randol is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company, of the following described lands, within the meaning of Section 4 of said act of Congress of March 3, 1887, and within the meaning of the Act of Congress of March 2, 1896, entitled, "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to the Southern Pacific Railroad Company, and said defendant having purchased said land from and under said Company in good faith; the title of said defendant and of his heirs, grantees and assigns is hereby confirmed; said lands being described as follows, to wit:

All of Sec. 25, and the S. ½ of Sec. 35, Tp. 6 N., R. 12 W.

All of said lands being north and west of San Bernardino Base and Meridian, California.

It is further ordered, adjudged and decreed that nothing in the original decree entered in this cause on July 19, 1894, shall be construed to enjoin the defendant bona fide purchasers from asserting title to any of the said lands to which rights are by this decree adjudged them.

It is further ordered, adjudged and decreed that this decree shall not be construed as determining the character of any of the lands described herein with respect to minerals, the title to which is not by this decree confirmed, nor shall it in anywise affect the jurisdiction of the land department of the United States to determine such character of any of said lands, the title of which is not hereby confirmed.

It is further ordered, adjudged and decreed that each party shall pay his own costs in the matter of this motion for further decree.

ROSS,
Circuit Judge.

Decree entered and recorded August 5th, 1898.

WM. M. VAN DYKE, Clerk.

[Endorsed]: No. 184. In U. S. Circuit Court, Southern District of California, United States vs. Southern Pacific Railroad Co. et al. Decree filed Aug. 5, 1898, Wm. M. Van Dyke, Clerk; Joseph H. Call, Spl. U. S. Atty.

Whereupon, said Mandate of the Supreme Court of the United States, copy of order that further proceedings in this Court be dismissed without prejudice as to certain lands, and said final decree are hereto annexed, said final

decree being duly signed, filed and enrolled, pursuant to the practice of said Circuit Court. Attest, etc.,

[Seal.] WM. M. VAN DYKE, Clerk.

[Endorsed]: No. 184. In the Circuit Court of the United States, Ninth Judicial Circuit, for the Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Enrolled Papers. Filed August 5th, 1898. Wm. M. Van Dyke, Clerk. Recorded Decree, Register Book No. 2, page 259.

No. 184.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,

vs.

THE SOUTHERN PACIFIC RAILROAD Company, et al.,

Defendants.

Stipulation.

It is stipulated in this cause that if either or any of the parties shall appeal from the decree or supplemental decree heretofore entered on the fifth day of August, 1898, or from any part thereof, that such appellant may use, as a part of the Transcript upon appeal to the Circuit Court of Appeals or to the United States Supreme Court, so much of the transcript of the record as has been filed in

said courts by the defendants upon their appeals heretofore taken.

JOSEPH H. CALL,

Special United States Attorney and Counsel for the United States.

WM. F. HERRIN & WM. SINGER, Jr.,

Counsel for Defendants.

[Endorsed]: No. 184. In U. S. Circuit Court, Southerr Dist. of Cal., United States vs. Southern Pacific R. R. Co. et al. Stipulation concerning appeal. Filed Sep 30, 1898. Wm. M. Van Dyke, Clerk; Joseph H. Call, Spl. U. S. Atty.

No. 184.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, *Complainants,*

vs.

THE SOUTHERN PACIFIC RAILROAD Company, et al., *Defendants.*

Petition for and Order Allowing Appeal.

To the Judges of the United States Circuit Court, Ninth Circuit:

The United States of America, conceiving themselves aggrieved by the decree made and entered herein on the 5th day of August, 1898, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth

Circuit, and file herewith their assignment of errors, asserted and intended to be urged upon appeal, and they pray that their appeal may be allowed; and further pray upon this appeal being allowed that all proceedings in this cause may be stayed, pending such appeal.

And your peititioners further pray that in pursuance of the provisions of Section 1013, United States Revised Statutes and of Section 11 of the act of Congress of March 3, 1891, establishing the Circuit Court of Appeals, that the Transcript of the record filed in the said Circuit Court of Appeals, Ninth Circuit, by the defendants herein upon their appeal heretofore allowed, may be used by your petitioners, and that your petitioners may be heard thereon in the same manner as if they had filed such record therein.

Dated this 30th day of September, 1898.

JOSEPH H. CALL.

Special Assistant U. S. Attorney and of Counsel for United States.

The foregoing petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the Transcript of the record filed in the said Circuit Court of Appeals by the defendants herein, upon their appeal heretofore allowed, may be used by the United States, and that this appeal of the United States may be heard thereon and to the end that a full and complete Transcript of the record shall be made and transmitted to said Circuit Court of Appeals, the clerk of this Court shall make and transmit to the said Circuit Court of Appeals in addition to the record filed by the defendants on their appeal, a true copy of the

petition of the United States for appeal, their assignment of errors, the order allowing appeal and all other proceedings in the case, not included in the transcript of the record filed by the defendants, as aforesaid.

Dated this 30th day of Sep., 1898.

OLIN WELLBORN,
Judge.

No. 184.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Complainants,
vs.
SOUTHERN PACIFIC RAILROAD COMpany et al.,
Defendants.

Assignment of Errors of United States, Appellants.

The United States in connection with their petition for appeal herein present and file therewith their assignment of errors, as to which matters and things they say that the decree entered herein on August 5, 1898, is erroneous, to wit:

1 (a). The Court erred in adjudging that defendant George Loomis. is a bona fide purchaser from and under Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in parapraph or item "first" in said decree.

(b). The Court erred in adjudging that defendant

George Loomis is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5 of said act of March 3, 1887.

2 (a). The Court erred in adjudging that defendant Pacific Coast Oil Company is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in paragraph or item "second" in said decree.

(b). That the Court erred in adjudging that defendant cific Coast Oil Company is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

3 (a). The Court erred in adjudging that defendant Jackson A. Graves is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in paragraph or item "third" on said decree.

(b). The Court erred in adjudging that defendant Jackson A. Graves is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

4 (a). The Court erred in adjudging that defendant Mary L. Gould is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in paragraph or item "fourth" in said decree.

(b). The Court erred in adjudging that defendant Mary L. Gould is entitled to purchase said land from the United

States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

5 (a). The Court erred in adjudging that defendant M. W. Stimson is entitled to purchase said lands from the United States upon complying with the provisions of Section 5, of said act of March 3, 1887.

6 (a). The Court erred in adjudging that defendant Charles M. Stimson is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in paragraph or item "sixth" in said decree.

(b). The Court erred in adjudging that defendant Charles M. Stimson is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

7 (a). The Court erred in adjudging that defendant Daniel D. Brunk is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in paragraph or item "seventh" in said decree.

(b). The Court erred in adjudging that defendant Daniel D. Brunk is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

8 (a). The Court erred in adjudging that defendant Stefano Cuneo is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3,

1887, of the lands described in paragraph or item "eighth" in said decree.

(b). The Court erred in adjudging that defendant Stefano Cuneo is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

9 (a). The Court erred in adjudging that defendant Gianbtista Suraco is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in paragraph or item "ninth" in said decree.

(b). The Court erred in adjudging that defendant Gianbtista Suraco is entitled to purchase said lands from the United States upon complying with the provisions of Section 5, of said act of March 3, 1887.

10 (a). The Court erred in adjudging that defendant William H. Carlson, is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in paragraph or item "tenth" in said decree.

(b). The Court erred in adjudging that defendant William H. Carlson is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

11 (a). The Court erred in adjudging that defendant Thomas F. Mitchell is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of

March 3, 1887, of the lands described in paragraph or item "eleventh" in said decree.

(b). The Court erred in adjudging that defendant Thomas F. Mitchell is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

12 (a). The Court erred in adjudging that defendant Ramon Perea is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 5, of the act of Congress of March 3, 1887, of the lands described in paragraph or item "twelfth" in said decree.

(b). The Court erred in adjudging that defendant Ramon Perea is entitled to purchase said lands from the United States, upon complying with the provisions of Section 5, of said act of March 3, 1887.

13 (a). The Court erred in adjudging that defendant Jackson A. Graves is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4, of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "thirteenth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

14 (a). The Court erred in adjudging that defendant D. M. Sutherland is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4, of said Act of Congress of March 3, 1887, or within the meaning of said Act of Con-

gress of March 2, 1896, of the lands described in paragraph or item "fourteenth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

(c). It appearing that defendant D. M. Sutherland contracted to purchase said land from said railroad company for $400.00, of which amount he was paid only $133.35, the Court erred in confirming said land to said defendant to the exclusion of the legal title and the estate and interest in said land acquired by the United States, by virtue of the decree against defendant Southern Pacific Railroad Company, heretofore passed and affirmed by the Supreme Court.

15 (a). The Court erred in adjudging that defendant Clarence T. Cleve is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "fifteenth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

16 (a). The Court erred in adjudging that defendants Peter Hamilton and Mrs. Thomas Allison are bona fide purchasers from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the

lands described in paragraph or item "sixteenth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

17 (a). The Court erred in adjudging that defendants William Ferguson and James Hamilton are bona fide purchasers from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4, of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "seventeenth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

18 (a). The Court erred in adjudging that defendant Ira H. Bradshaw is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4, of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "eighteenth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

19 (a). The Court erred in adjudging that defendants Peter Cook, M. L. Wicks, and Alexander Cook, are bona fide purchasers from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the

meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "nineteenth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

20 (a). The Court erred in adjudging that defendant Mrs. Mary L. Gould is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twentieth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

21 (a). The Court erred in adjudging that defendant Will D. Gould is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said Act of Congress of March 3, 1887, or within the meaning of the said Act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-first" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

(b). The Court erred in refusing to adjudge that the United States are the owners of sail lands by t itle adsolute and in fee.

c). It appearing that defendant Will D. Gould contracted to purchase said land from said com-

pany upon certain terms and conditions, for $400.00, of which amount he has paid only $80.00, the Court erred in confirming said land to said defendant to the exclusion of the legal title, estate and interest in said land acquired by the United States by virtue of the decree against defendant Southern Pacific Railroad Company, heretofore passed and affirmed by the Supreme Court.

22 (a). The Court erred in adjudging that defendant James M. Hait is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-second" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

23 (a). The Court erred in adjudging that defendants Richard Dillon and John Kenealey are bona fide purchasers from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-third" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute in fee simple.

24 (a). The Court erred in adjudging that defendants J. Garber and Mc. H. Pierce are bona fide purchasers from and under defendant Southern Pacific Railroad

Company, within the meaning of Section 4 of said Act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-fourth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

25 (a). The Court erred in adjudging that defendant Nathan Cole, Jr., is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-fifth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

26 (a). The Court erred in adjudging that defendant Jacob Harps is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-sixth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

27 (a). The Court ererd in adjudging that defendants A. W. Potts and J. F. Holbrook are bona fide purchasers from and under defendant Southern Pacific Railroad

Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-seventh" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

28 (a). The Court erred in adjudging that defendant Pablo Lopez is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-eighth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

29 (a). The Court erred in adjudging that defendant Jesse Martin Blanchard is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "twenty-ninth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

30 (a). The Court erred in adjudging that defendant Richard Dillon is a bona fide purchaser from and under defendant Southern Pacific Railroad Company, within

the meaning of Section 4 of said act of Congress of March 3, 1887, or within the meaning of the said act of Congress of March 2, 1896, of the lands described in paragraph or item "thirtieth" in said decree.

(b). The Court erred in refusing to adjudge that the United States are the owners of said lands by title absolute and in fee.

31. The Court erred in refusing to adjudge that the United States are the owners by title in fee simple absolute of all of the lands described in said decree.

32. The Court erred in adjudging that defendant Jackson A. Graves, who purchased pendente lite, the lands confirmed to him by said decree, from defendant The Atlantic and Pacific Fibre and Importing Company, Limited, a corporation organized under the laws of Great Britain, and not a citizen of the United States, acquired by said purchase any greater or better right, title, interest or estate than were possessed by his said grantor.

33. The Court erred in adjudging that those defendants who purchased lands from the Southern Pacific Railroad Company, subsequent to Nov. 22, 1889, the date of commencement of the suit of United States vs. Southern Pacific Railroad Company, the decision of the Supreme Court, in which case is reported in 146 U. S., 615-619, were not affected and charged thereby with notice of the right and title of the United States to the lands within the limits of the grant to the Atlantic and Pacific Railroad Company.

34. The Court erred in refusing to adjudge that those defendants who purchased lands from the Southern Pacific Railroad Company, subsequent to July 6, 1886, the

date of the approval of the act of Congress forfeiting the lands and rights to lands granted to the Atlantic and Pacific Railroad Company, and restoring said lands to the public domain, were not charged thereby with notice of the right and title of the United States to said lands.

35. The Court erred in refusing to adjudge that those defendants who purchased unpatented lands from the Southern Pacific Railroad Company, by executory contracts where only a part of the purchase price was paid, which contracts recited in effect that the railroad company had not yet secured a patent or title to said lands, and that if it failed to do so, that the company would refund the money paid to the purchaser, were not affected and charged thereby with notice of the right and title of the United States to said lands.

36. The Court erred in adjudging that any defendant who proposed by his so-called contracts to purchase unpatented lands from the Southern Pacific Railroad Company, in the event that patents were procured from the United States to said Company, and to pay for such lands installments is a "purchaser" within the meaning of said act of March 3, 1887, or the act of March 2, 1896, it appearing that the procurement of patent from the United States was a condition precedent to said sale.

37. The Court erred in adjudging that any of said defendants who purchased any of said lands from the Southern Pacific Railroad Company, subsequent to the passage of said act of March 3, 1887, is a bona fide purchaser, or entitled to any of the benefits of said act, or of any act amendatory or supplemental thereto.

38. The Court erred in adjudging that those defend-

ants, who purchased lands from the Southern Pacific Railroad Company, subsequent to the promulgation of the decision of the Secretary of the Interior in the case of Gordon vs. Southern Pacific Railroad, 5 L. D., 691, viz., on June 7, 1887, were not affected and charged with notice thereby that the lands and rights to lands in California, granted to the Atlantic and Pacific Railroad Company, were restored to the public domain by the act of Congress of March 6, 1886.

39. The Court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits reported in 146 U. S., 615-619, were pending, were not bound by the adjudications in those cases.

40. The Court erred in adjudging that any executory contract for the sale of land made by the Southern Pacific Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

Wherefore, the United States pray that said decree may be reversed in said particulars, and that the United States may be granted the relief therein set forth.

JOSEPH H. CALL,

Special Assistant U. S. Attorney, and of Counsel for the United States.

[Endorsed]: No. 184. United States vs. Southern Pac. R. R. Co. et al. Petition for Appeal. Filed Sep. 30, 1898. Wm. M. Van Dyke, Clerk. Joseph H. Call, Spl. U. S. Atty.

Clerk's Certificate to Transcript.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California, do hereby certify the foregoing seventy-seven (77) typewritten pages, numbered from 1 to 77 inclusive, and comprised in one volume, to be a full, true and correct copy of the opinion of the Court on motion for further decree, the petition of the United States for appeal, and of all other proceedings in the above and therein entitled cause, not included in the transcript of the record filed in the United States Circuit Court of Appeals by the defendants herein, upon their appeal hertofore allowed; and that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in said cause, in accordance with the order allowing and granting the petition for appeal by the United States and prayer for supersedeas.

I do further certify that the cost of the foregoing record is $50.30.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the southern district of California, this 26th day of October, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-third.

[Seal.] WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

(Endorsed): No. 484. U. S. Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellant, vs. (Southern Pacific Railroad Co.) George Lomis et al. Transcript of Record. Appeal from the U. S. Circuit Court, Southern District of California. Filed October 28th, 1898. F. D. Monckton, Clerk.

The portions of the Record following are, by stipulation of Counsel (see page 1 of this Record), printed from the case of The Southern Pacific Railroad Company, et al., Appellants, vs. The United States, No. 193 in the United States Circuit Court of Appeals.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, *Plaintiff*,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. Mills and Garrit L. Lansing, Trustees, and the City Brick Company, *Defendants.*

Bill in Equity.

To the Judges of the Circuit Court of the United States for the Southern District of California:

The United States of America, by the Attorney General thereof, brings this its Bill against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of California, D. O. Mills and Garrit L. Lansing, trustees, and the City Brick Company, a corporation organized and existing under and by virtue of the general laws of California, each citizens of the State of California; and thereupon your orator shows that the following described land was acquired by the United States of America from Mexico, in the year 1846, and confirmed by treaty of Guadalupe Hidalgo, in the year 1848, and was then, and ever since has been, public land of the United States, and during all said times your orator was and still is the absolute owner of said land, by title in fee simple, described as follows, to wit:

All the sections of land designated by odd numbers in Townships 3 and 4 North, Ranges 5, 6, and 7 West; Town-

ship 1 North, Ranges 16, 17 and 18 West; Townships 6 and South ¾ of Township 7 North, Ranges 11, 12, 13, 14, 15, 16, 17, 18 and 19 West;

Also all the sections of land designated by odd numbers, as shown by the public surveys embraced within the townships from number 2 North to number 5 North, both inclusive, and ranges from number 8 West to number 18 West, both inclusive (except sections 23 and 35, in Township 4 North, Range 15 West; and except sections 1, 11 and 13, in Township 3 North, Range 15 West);

Also the unsurveyed lands within said area which will be designated as odd numbered sections when the public surveys according to the laws of the United States shall be extended over such townships, all surveyed by San Bernardino Base and Meridian, State of California.

Your orator shows that by the Act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company in aid of the construction of such railroad, a large amount of lands in the State of California and other States and Territories, and to which said act your orator refers. (See U. S. Statutes, Vol 14, page 292.)

Section 3 of said act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails,

troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said Company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims, or rights, at the time the line of said road is designated, by a plat thereof, filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

And Section 18 provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of Cali-

fornia, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant, and proceeded to construct said road, and did locate on the ground, and designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points and places named in said act, and in the time and manner provided in said act, to the Pacific Ocean; and on or about 1866, did file such plat in the office of the Commissioner of the General Land Office, and which designation and location was approved by the Secretary of the Interior at that time, and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market, and reserved from sale.

Your orator further shows the Court that, by section 23 of an act of Congress, approved March 3, 1871 (See U. S. Stats., Vol 16, p. 573), entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the

construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July 27, 1866.

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

Said Southern Pacific Railroad Company, which then existed, accepted said grant, and on April 3, 1871, did designate the line of its said road by a plat thereof, which it on that day filed in the office of the Commissioner of the General Land Office.

Your orator further shows that, by the act of Congress, approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited,

resumed and restored to the public domain for non-completion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

Your orator alleges that on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of The Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," with the corporate name of the Southern Pacific Railroad Company. Said act is printed in the Statutes of California, 1861, at page 607, and to which said act your orator refers.

Said corporation was formed for the purpose and with the corporate power, as stated in its Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego in said State; thence eastward through said County of San Diego to the eastern line of the State of California; there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi River.

Your orator further shows that on October 11th, 1870, under and by virtue solely of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate their capital

stock, debts, property, assets and franchises, said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara and Pajaro Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did, without any authority from the United States, by a contract in writing, agree to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock, and creating a new and different corporation under the name and style of the Southern Pacific Railroad Company, which contract was signed, published and filed, as provided by the laws of California.

Your orator further alleges that on the 12th day of August, 1873, under and by virtue solely of the law of the State of California of May 20, 1861, before refererd to, authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company pretended to be organized in 1870, as aforesaid, and the Southern Pacific Branch Railroad Company, each organized and then existing railroad companies under and by virtue of the laws of California, did, by a contract in writing, without authority from the United States, agree to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and cancelling the old ones, and creating a new and different corporation by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto at-

tached, marked "Exhibit A," and did duly publish and file such new articles as required by the laws of California.

And your orator alleges that the Southern Pacific Railroad Company, which was organized and created on August 12, 1873, by the said pretended articles of amalgamation and consolidation of said several railroad companies as hertofore set forth, did construct and complete a railroad from Tehachapi Pass by way of Los Angeles to the Colorado River in the manner and within the time prescribed in said act of Congress in which the Southern Pacific Railroad Company therein named was authorized and empowered to do, and there was not and is not now, any railroad or part thereof constructed or completed under said act or between said points otherwise than as aforesaid.

Your orator further shows that the general routes of said Atlantic and Pacific Railroad Company and of said Southern Pacific Railroad Company under said Act of March 3, 1871, as said routes were located as aforesaid, cross each other in the States of California.

Your orator further alleges that said lands, in suit herein before described, are situated on the general line of the said designated route of the Atlantic and Pacific Railroad Company, less than twenty miles therefrom and are less than twenty miles from said designated route of said Southern Pacific Railroad Company, and in such overlapping limits on the general route of each of said lines of road.

Your orator further shows that said lands have never been granted, sold, reserved, occupied by homestead set-

tlers, pre-empted, or otherwise disposed of by the United States, or by the Mexican or Spanish Governments, or any other government or authority, in whole or in part, or any estate or interest therein, otherwise than as set forth herein, and are not mineral lands.

Your orator further alleges that none of the lands in suit herein described as aforesaid, have ever been granted or conveyed to any or either of the defendants herein or to said Southern Pacific Railroad Company organized by said articles of August 12, 1873, and that said last named company has at all times failed and refused to pay into the treasury of the United States the cost of surveying, selecting and conveying said lands.

Your orator alleges that said Southern Pacific Railroad Company, to which corporation said grant was made by said act of Congress of March 3, 1871, did not build or construct any portion of said railroad designated in said act to be constructed.

Your orator further alleges that defendants D. O. Mills and Garrit L. Lansing have a mortgage or deed of trust from defendant railroad company for the above described land, to secure the payment of certain indebtedness of said defendant company to them as trustees, which mortgage is dated April 1, 1875, and which is executed in due form of law and is recorded in Los Angeles and San Bernardino Counties, California, and consititues a cloud upon the tile of your orator.

Your orator alleges that all of said lands were and are naturally timbered and wooded lands, and valuable chiefly for the timber and wood thereon.

Your orator further alleges that defendant Southern

Pacific Railroad Company has, while claiming and pretending to own said lands, at various and divers times during the last ten years, by pretended conveyances, executed in due form of law, pretended to sell and convey large portions of said lands, and the wood and timber thereon, to variuos and divers persons to your orator unknown; and has thus realized from such wood and timber large sums of money which it has appropriated and converted to its own use.

That the names of such pretended purchasers, amounts and descriptions of land so pretended to be sold, and moneys realized therefrom by said defendant railroad company, are unknown to your orator; and as to all said matters the plaintiff asks that defendants may answer fully as to the exact nature and extent thereof, giving the dates, amounts received, names of purchasers, and extent of adverse claims.

And your orator asks that, when such pretended purchasers and adverse claimants become known to the plaintiff, that they may be added as parties defendant herein.

Your orator alleges, upon information and belief, that defendant the City Brick Company makes some claim to all or a portion of said lands, the nature and extent of which claim is unknown to your orator, but which your orator prays may be fully disclosed by said defendant.

Your orator alleges that defendant railroad company now claims to own said lands and denies the plaintiff's right and title thereto; and said company, and said pretended purchasers from it, by its license and direction, have, during the past five years at many and divers times

to your orator unknown, unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, carried away such timber and used and converted the same to their own use, the amount and value of which is unknown to your orator, but which is the greater part of the wood and timber naturally on said land; and are now removing from said lands wood cut thereon, and threatening to chop down other trees on said land and remove all said wood, and unless enjoined will do so, to the great and irreparable injury of the plaintiff.

Your orator further shows that the amount in controversy herein exceeds the sum or value of $5,000, exclusive of interest and costs.

Your orator alleges that by reason of the premises the defendants herein have surrendered, forfeited and released to the United States all rights and franchises and lands, if they had any such, granted by said Acts of Congress aforesaid, and which surrender, forfeiture and release the plaintiff prays may be enforced as to the land in suit herein, without prejudice to other rights of the United States.

In tender consideration whereof, and for as much as the plaintiff is remediless at and by strict rules of the common law, and can only be relieved in a court of equity, your orator prays that its title to said lands may be quieted, and that said mortgage to defendants Mills and Lansing may be decreed to be null and void and vacated, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and your orator

prays that the defendants each, and their agents be forever enjoined from cutting any tree or wood upon said land and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land any wood or timber now cut thereon or hereafter cut thereon.

Your orator further prays for an accounting from the defendant Southern Pacific Railroad Company for all wood and timber sold by it, and for all the moneys and profits realized from the sale or pretended sale of such lands containing wood and timber, and for such other and further relief as the Court may deem equitable in the premises.

May it please your Honors to grant unto your orator a writ of injunction issuing out of and under the seal of this Honorable Court, directed to defendants The Southern Pacific Railroad Company, and D. O. Mills and Garret L. Lansing, trustees, and the City Brick Company, enjoining them and each of them from asserting any right, claim or title to said lands, and from denying plaintiff's title thereto, and enjoining them each from cutting any tree or wood now on said land, and from removing any wood or timber now cut on said land.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and the City Brick Company, commanding them each, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honors, and then and there answer the premises and further

to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

Your orator waives answer under oath.

JOSEPH H. CALL,

Special Asst. U. S. Attorney and of Counsel for Plaintiff.

WILLOUGHBY COLE,

United States Attorney Southern District of California.

[Endorsed]: 184. In U. S. Circuit Court Southern Dist. of Cal. United States vs. Southern Pacific Railroad Company et al. Bill of Complaint. Filed May 17th, 1890. Wm. M. Van Dyke, Clerk. J. H. Call, Spl. Asst. U. S. Atty. Longley Bros., Reporters and typewriters, Tel. 722, Los Angeles, Cal.

United States of America. Circuit Court of the United States Ninth Circuit, Southern District of California.

Subpoena ad Respondendum to S. P. R. R. Co. et al., and Marshal's Return.

IN EQUITY.

The President of the United States of America, Greeting:

To the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and the City Brick Company.

You are Hereby Commanded, That you be and appear

in said Circuit Court of the United States aforesaid, at the Court Room in Los Angeles, on the seventh day of July, A. D. 1890, to answer a bill of complaint exhibited against you in said Court by the United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United Staes, this 17th day of May, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fourteenth.

[Seal.] WM. M. VAN DYKE, Clerk.

MEMORANDUM PURSUANT TO RULE 12, SUPREME COURT U. S.

You are hereby required to enter your appearance in the above suit on or before the first Monday of July next, at the Clerk's Office of said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

WM. M. VAN DYKE, Clerk.

United States Marshal's Office,

Southern District of California.

I hereby certify that I received the within writ on the 17th day of May, 1890, and personally served the same on the 19th day of May, 1890, by delivering to and leaving with The Southern Pacific Railroad Company, by delivering and leaving with Charles F. Crocker, a director and managing agent of said Company, and by delivering to and leaving with C. P. Huntington, a director and managing agent of said Company, said defendant named

therein, personally, at the County of Los Angeles in said District, a certified copy thereof. I am unable to find the within named D. O. Mills and Garrit L. Lansing and the City Brick Company in my district.

GEO. E. GARD, U. S. Marshal.

By M. F. Tarble, Deputy.

Los Angeles, June 2d, 1890.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California .In Equity. United States of America vs. The Southern Pacific Railroad Company et al. Subpoena. Filed June 5th, 1890. Wm. M. Van Dyke, Clerk.

Amended Bill of Complaint.

To the Judges of the Circuit Court of the United States, for the Southern District of California:

I.

The United States of America, by the Attorney-General thereof, by an order of Court first had and obtained, brings this its amended bill of complaint against: The Southern Pacific Railroad Company, acting as a corporation under and by virtue of the authority hereinafter set forth; D. O. Mills and Garrit L. Lansing, trustees; the City Brick Company, a corporation organized and existing under and virtue of the general laws of the State of California; the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation or-

ganized and existing under and by virtue of the laws of Great Britain; the Fairmont Land and Water Company; the Farming and Fruit Land Company; the North Pasadena Land and Water Company, and the Pacific Coast Oil Company, each a corporation organized and existing under any by virtue of the laws of California; and Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Matin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill,

John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, James O' Reilly, George L. Ott, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn,

Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, and J. Youngblood; and each of said defendants being a citizen of the State of California, and residing therein, except said Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, which, as your orator alleges upon its information and belief, is a citizen of Great Britain and a British subject;

And thereupon your orator alleges and shows unto the Court that the lands hereinafter described were acquired by the United States of America from Mexico, in the year 1846, and the title to said lands were confirmed to your orator by treaty of Guadalupe Hidalgo in the year 1848; and all of said lands were then, ever since have been, and now are owned by the United States, by title in fee simple, and your orator during all of said times has been, and now is, in possession thereof; said lands being described as follows, to wit:

All of the sections of land designated by odd numbers in Townships three (3) and four (4) North, Ranges five (5), six (6) and seven (7) West; Township one (1) North, Ranges sixteen (16), seventeen (17) and eighteen (18) West; Townships six (6) and South three-fourths of Township seven (7) North, Ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seven-

teen (17), eighteen (18) and nineteen (19) West; also all the sections of land designated by odd numbers as shown by the public surveys, embraced within the townships from number two (2) North to number five (5) North, both numbers included, and ranges from number eight (8) West to number eighteen (18) West, both numbers included, except Sections twenty-three (23) and thirty-five (35) in Township four (4) North, Range fifteen (15) West, and except Sections one (1), eleven (11) and thirteen (13), in Township three (3) North, Range fifteen (15) West; also the unsurveyed lands within said area which will be designated as odd numbered sections when the public surveys according to the laws of the United States shall have been extended over such townships; all the aforesaid lands being surveyed by San Bernardino Base and Meridian, and situated within the State of California.

II.

Your orator further shows that, by the Act of Congress approved July 27, 1866, entitled "An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company, in aid of the construction of such railroad, a large amount of lands in the State of California and other states and territories, and to the whole of which said Act your orator refers (See U. S. Statutes, Volume 14, page 292).

Section 3 of said Act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns,

for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said Company may adopt, through the Territories of the United States, and ten alternatee sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims, or rights, at the time the line of said road is designated, by a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this Act."

And Section 18 of said Act provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with said Atlantic and Pacific Railroad, formed under this Act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform guage and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its roads on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said Act, from Springfield, Missouri, by way of the points and places named in said Act, and in the time and manner provided in said Act, to the Pacific Ocean; and on or about ————————, 1866, did file such plat in the office of the Commissioner of the General Land Office, and which designation and location was approved by the Secretary of the Interior at that time, and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market and reserved; including said lands in suit herein which fell within the twenty mile limits of said line.

III.

Your orator further shows the Court that, by Section 23 of an Act of Congress approved March 3, 1871, (See U. S. Stats., Vol. 16, p. 573), entitled "An Act to Incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the Act of July 27, 1866.

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

IV.

Your orator further shows that, by the Act of Congress approved July 6, 1886, entitled "An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast and to restore the same to settlement, and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon the

said Atlantic and Pacific Railroad Company were forfeited and resumed to the United States, and restored to the public domain, for non-completion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

V.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein make some claim of ownership to the lands above described, the exact nature and extent of such claims being unknown to yourorator; but your orator is informed and believes, and so alleges the fact, that said defendants claim said lands under and by virtue of said Act of Congress of March 3rd, 1871, above set forth, granting lands to the Southern Pacific Railroad Company to aid in the construction of a railroad and telegraph line from Tehachapi Pass, via Los Angeles, to a point at or near the Colorado River, and to there connect with said Texas and Pacific Railroad Company; and said defendants claim that said Southern Pacific Railroad Company did accept the terms and conditions of said grant, and did designate the route of its road between said points within the time and manner provided in said Act of Congress, but your orator alleges that the designated line of route of said Southern Pacific Railroad Company so claimed and pretended to be located as aforesaid lies upon the same line as that of the Atlantic and Pacific Railroad Company, and the lands in suit herein, if said Southern Pacific Railroad Company had designated its said line of route as claimed by said defendants, would be at the place where the said routes

would be upon the same general line, and such routes would have intersected each other.

VI.

Your orator further alleges that, if said Southern Pacific Railroad Company had designated its line of route from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado River as claimed by defendants herein, or between such terminal points at all, that such route would have been upon the same general line as the route of said Atlantic and Pacific Railroad Company, located as aforesaid, and all the lands in suit herein would have fallen within the limits of the grant to each of said companies and in such overlapping limits within the twenty mile and primary limits of said Atlantic and Pacific Railroad; but your orator alleges that none of said lands were covered by said grant to said Southern Pacific Railroad Company, and none of said lands were of the category of lands which were to be granted to said Company.

VII.

Your orator further alleges and shows unto the Court that all of the lands in suit herein are situated within twenty miles of the designated line of route of said Atlantic and Pacific Railroad Company and within the primary and twenty mile limits of said grant; and as respects the mineral character of said lands, and of every tract thereof, they were in the same condition in that respect during the whole of the year 1866 that they have been at all times from that year down to and including the 3rd day of April, 1871.

VIII.

Your orator is informed and believes, and so alleges the fact to be, that the claim of defendants to said lands is invalid, and not founded upon any legal or equitable right, but is a mere pretence and excuse for the defendants to trespass upon said lands.

IX.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein claim that a line of railroad and telegraph line, from Tehachapi Pass, by way of Los Angeles, to the Colorado River, has been constructed by the Southern Pacific Railroad Company within the time and in the manner provided by said Act of Congress of March 3, 1871, above referred to, in which it is therein provided for the construction of a railroad and telegraph line between said points, and that Commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said Act; but your orator alleges that such claims and pretences are unfounded, and that said Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, has not constructed any railroad or telegraph line between said points within the time or manner provided by said Act, nor at all.

X.

Your orator further alleges that, on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An Act to provide for

the incorporation of railroad compaies and the management of the affairs thereof, and other maters relating thereto," which said Act is printed in the Statutes of California of 1861, at page 607, and to which Act your orator refers.

XI.

Your orator further alleges that said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the Counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego in said State; thence Eastward, through said County of San Diego, to the Eastern line of the State of California, there to connect with the contemplated railroad from the Eastern line of the State of California to the Mississippi River.

XII.

Your orator further shows that, on October 11, 1870, said Southern Pacific Railroad Company entered into pretended articles of consolidation and amalgamation with the San Francisco and San Jose Railroad Company, a corporation organized under the laws of California with similar powers, and the Santa Clara and Pajaro Valley Railroad Company, also a corporation organized under the laws of California with similar powers, by which pretended articles of consolidation and amalgamation said several companies agreed to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock and creat-

ing a new and different corporation by the name and style of "The Southern Pacific Railroad Company," which pretended articles were signed, published and filed in the mode as provided by said general law of California; but your orator alleges that the articles of incorporation of said railroad companies respectively, and of neither of them, authorized said companies to consolidate or amalgamate with any other railroad company; and your orator is informed and believes, and so alleges the fact to be, that such pretended consolidation was unauthorized by the laws of the State of California and without the consent of said State, and was unauthorized by the laws of the United States and without authority from the United States, and that such pretended consolidation was and is illegal and void.

XIII.

Your orator further alleges and shows unto the Court that, on the 12th day of August, 1873, said Southern Pacific Railroad Company, the corporation pretended to be created by said articles of consolidation and amalgamation of October 11, 1870, as aforesaid, and the Southern Pacific Branch Railroad Company, a corporation organized and existing under the laws of the State of California, formed for the purpose and with the corporate power as stated in its articles of incorporation, of constructing, owning and maintaining a railroad within the State of California, did pretend to consolidate and amalgamate their capital stock, debts, franchises, and rights, and did enter into pretended articles of consolidation and amalgamation, by which said two companies agreed to amalgamate and consolidate their capital stock, debts, prop-

erty, assets and franchises, creating a new capital stock and issuing new certificates of stock and purporting to create a new and different corporation by the name and style of "The Southern Pacific Railroad Company," a copy of which pretended articles of consolidation and amalgamation are hereto attached, marked "Exhibit A," and made a part hereof; and did duly sign such articles and publish and file the same as required in that respect by the laws of the State of California; but your orator alleges that the articles of incorporation of said two companies respectively, and neither of them, authorized or empowered said companies, or either of them, to enter into any consolidation or amalgamation with any other railroad company, and did not authorize them or either of them to sell or transfer its entire railroad to any other railroad company; and your orator alleges that such pretended articles of incorporation and amalgamation were illegal and void, and were unauthorized and prohibited by the laws of the State of California, and were unauthorized and prohibited by the laws of the United States; and were entered into without any authority from the Congress of the United States or any other competent authority; and by entering into such pretended articles of consolidation and amalgamation said Southern Pacific Railroad Company, which was named in said Act of Congress of March 3, 1871, forfeited, abandoned and released to the United States all the lands granted by said Act of Congress of March 3, 1871, and all the rights, grants, franchises and privileges conferred by said Act, and all right to earn or acquire any and all lands under said Act.

XIV.

Your orator is informed and believes, and so alleges the fact to be, that the Southern Pacific Railroad Company which is defendant herein, claims to have pretended patents issued by the United States in due form of law to it, said Southern Pacific Railroad Company, purporting to convey to said Company a portion of the lands in suit herein, but which lands are unknown to your orator; but your orator alleges that if any such patents were issued they were issued illegally and without any authority of law, and are illegal and void.

XV.

Your orator is informed and believes, and so alleges the fact to be, that certain of the defendants herein, but which defendants are unknown to your orator, claim to be bona fide purchasers for value from the Southern Pacific Railroad Company, the corporation named in said Act of Congress of March 3, 1871, and claim that their rights to certain tracts of land are protected and confirmed by the Act of Congress approved March 3, 1887, entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes" (See 24 Statutes, 556).

XVI.

Your orator further alleges and shows unto the Court that defendants D. O. Mills and Garrit L. Lansing have a mortgage or deed of trust from defendant Southern Pacific Railroad Company, covering or purporting to cover the above described lands, to secure the payment of certain indebtedness of said defendant Company to them as

trustees, which mortgage is dated April 1, 1875, and which is executed in due form of law and is recorded in Los Angeles, and San Bernardino and Ventura Counties, in which said lands are situated, and constitutes a cloud upon the title of your orator.

XVII.

Your orator further alleges that said lands above described are naturally timbered or wooded lands and valuable for the timber and wood thereon; and that defendants herein, while claiming and pretending to own some interest in said lands, at various and divers times during the last five years, at many and divers times to your orator unknown, have unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, and carried away such timber and trees and converted the same to their own use, the amount and value of which is unknown to your orator, and are now removing from said lands wood cut thereon, and threatening to chop down other trees on said land, and unless enjoined will do so, to the great and irreparable injury of your orator.

XVIII.

Your orator further shows that the amount in controversy in this suit exceeds the sum or value of five thousand dollars, exclusive of interest and costs.

XIX.

Your orator is informed and believes, and so alleges the fact to be, that defendant Southern Pacific Railroad Company, while pretending and claiming to own some interest in said lands, at various and divers times during the past ten years to your orator unknown, by pretended

contracts and conveyances has pretended to sell and convey large portions of said lands to the other defendants herein, the amount and descriptions of which are unknown to your orator, and has thus realized from wood and timber on said land large sums of money which it has appropriated and converted to its own use.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief herein prayed, and to fully answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainant, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereinunder written they are respectively required to answer, that is to say:

Said defendant Southern Pacific Railroad Company is required to state: (1) the names of all of the pretended purchasers of said lands or any portion thereof from said company; (2) the amounts and descriptions of lands so pretended to be sold; (3) all moneys realized from said defendants respectively by said company;

(4) Each and all of said defendants are required to state the nature and extent of their pretended claim or claims to said lands.

And to the further end, therefore, that plaintiff may have that relief which it can only obtain in a Court of Equity, and that said defendants may answer the premises, your orator prays that, if it shall be found that Commissioners, pretending to be appointed by the President

of the United States for that purpose, have reported that said pretended railroad and telegraph line from Tehachapi Pass, via Los Angeles, to the Colorado River, have been constructed and completed in a good, substantial and workmanlike manner as in all respects required by said Act of March 3, 1871, heretofore referred to, and by such report that such pretended railroad has been pretended to be accepted by them or by the President of the United States, and that such pretended report or reports constitute a cloud upon the title of your orator to said lands, then your orator prays that such pretended report or reports may be set aside, annulled and cancelled.

And your orator further prays that said articles of consolidation and amalgamation dated August 12, 1873, between said Southern Pacific Railroad Company and said Southern Pacific Branch Railroad Company, may be set aside, annulled and cancelled, and that the contract of sale therein set forth, by which the Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, purports to sell and convey to the pretended consolidated company purported to be created by such articles all its rights, grants, privileges, assets, and property, and all the rights, grants, privileges, property, assets and lands granted and conferred by the United States by said Act of Congress of March 3, 1871, to the Southern Pacific Railroad Company therein named, may be set aside, annulled and cancelled.

And your orator further prays that said mortgage and deed of trust executed by said Southern Pacific Railroad Company, defendant herein, to D. O. Mills and Garrit L.

Lansing, as trustees, may be set aside, annulled and cancelled.

And your orator further prays that its title to said lands may be quieted, and that defendants, and each of them, be barred and estopped from having, asserting or claiming any right, title or interest therein adverse to your orator; and your orator prays that said pretended patent from the United States to the Southern Pacific Railroad Company may be set aside, cancelled and annulled, and that defendants be forever enjoined from chopping down or carrying away any wood, trees, or timber upon said land.

And your orator further prays that an account may be taken by and under the direction and decree of this Honorable Court for all moneys and profits realized by said defendants from wood, timber and trees taken from said land, and for all moneys and profits realized by defendant Southern Pacific Railroad Company from the pretended sale of said lands.

And your orator further prays that, if it shall be found that anyof the defendants hereinare bona fide purchasers for value of any of said lands, within the meaning of said Act of Congress of March 3, 1887, then your orator prays that such defendants may be protected in their title to said lands by decree of this Honorable Court, and that your orator may have judgment against defendant Railroad Company for the sum of two dollars and fifty cents per acre for all such lands, if any, which this Honorable Court may find to be held by defendants herein as such bona fide purchasers for value.

And your orator prays for such other and further re-

lief as this Court may deem equitable in the premises.

Your orator waives answer under oath.

JOSEPH H. CALL,

Special Assistant U. S. Attorney, and Solicitor for Complainant.

W. H. H. MILLER,

Attorney-General.

[Endorsed]: No. 184. In U. S. Circuit Court Southern Dist. of Cal. United States vs. Southern Pacific Railroad Company et al. Amended bill. Filed September 25th, 1891. Wm. M. Van Dyke, Clerk. Received copy of within amended bill for J. D. Redding, solicitor for defendants, in pursuance of Rule 49 of the Circuit Court. Wm. M. Van Dyke, Clerk. Joseph H. Call, Sol. for Compl.

Answer to Amended Bill.

No. 184.

United States of America. Circuit Court of the United States Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. Mills and Garrit L. Lansing, trustees, The City Brick Company, Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Burrell, Frederick H. Busby, A. W. But-

ler, H. A. Bond, William H. Carlson, V. E. Carson, B. F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmount Land and Water Company, Farming and Fruit Land Company, George W. Fentress, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, Thomas B. Lawhead, L. B. Lawson, M. La Fetra, Stephen L. Leighton, John Robarts and G. L. Mesnager, Executors of the Last Will and Testament of Miguel Leonis, Deceased, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May,

Angus S. McDonald, A. M. Melrose, Mrs. Flossie Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. H. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, William B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Orwan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Magie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysett, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks,

Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, R. N. C. Wilson, J. Youngblood,

Complainants,

Answer to Amended Bill.

Now come the respondents in the above-entitled cause, and for answer to the amended bill in equity, filed herein on the 26th day of September, 1891, against them, purporting to be a bill brought by the United States, by the Attorney General thereof, and signed by Joesph H. Call, as Special Assistant U. S. Attorney and counsel for complainant, and to so much and such parts of said bill as they are advised it is material for them to make answer unto, answering, say:

I.

That said respondents aver that the Southern Pacific Railroad Company, respondent herein, is a corporation, organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and a citizen of said last-mentioned State.

And the said respondents admit that the lands described in said bill were acquired by the United States of America from Mexico, in or about the year 1846, and the title to said lands was confirmed to the United States by the treaty of Guadeloupe Hidalgo in the year 1848. The said respondents deny that such lands, or any thereof, ever since such acquisition or confirmation of title thereof, have been, or at any time of, or at any time since, the filing of the bill of complaint in this suit were or have been, or are now, owned by the United States by title in fee simple or otherwise; they deny that the complainant dur-

ing said times, or at the time, or at any time since the filing of the bill of complaint in this suit, was, or has been, or that it now is, in possession thereof, and allege on the contrary, that the said lands described in the said bill, long before the filing of said bill, have been granted by the complainant to the respondent, the Southern Pacific Railroad Company, and for the most part, if not entirely, were in its possession, or the possession of its grantees, so far as any person or party was in actual possession thereof.

II.

The said respondents admit that by an Act of Congress approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said Company to aid in the construction of a railroad and telegraph line in said Act described, a large quantity of public lands, but it avers that such grant was made on and subject to the conditions and to the limitations in said Act mentioned, to which said Act of Congress reference is hereby made (U. S. Stats., Vol. XIV, p. 292). The said respondents admit that Sections 3 and 18 of said Act of Congress are correctly set forth and recited in said bill; but by reason of the insufficiency of said recitals this defendant refers to the whole of said Act of Congress, and the said respondents admit that the said Atlantic and Pacific Railroad Company duly accepted said grant, and began to construct said road in the State of Missouri, but they deny

that it ever proceeded to or did construct any portion of said road in the State of California.

And the said respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground, or designate upon a plat or map the whole of said line of railroad under or in accordance with said Act, from Springfield, Missouri, by way of the points and places named in said Act, in the time and manner provided in said Act, or otherwise, to the Pacific Ocean, and deny that it ever lawfully located or designated any part of said line in the State of California; and deny that on or about the day of ' 1866, or at any other time, said company did file any such plat in the Office of the Commisisoner of the General Land Office, and deny that at that or any such time, any such designation or location of said line of railroad was approved by the Secretary of the Interior, and deny that the odd sections of public lands for thirty miles on each side of said road (as authorized to be constructed by said Act) were withdrawn from market or reserved from sale, and deny that the lands in suit herein, or any of them, fell within the twenty mile limits of any such line, or were ever lawfully withdrawn from market, or reserved for or for the benefit of said Atlantic and Pacific Railroad Company.

The said respondents aver that the said Atlantic and Pacific Railroad Company never made any definite location of its railroad in California, nor constructed any part of a railroad in said State under or according to the Act of Congress approved July 27th, 1866, or any amend-

ments, modifications or supplements thereto, or otherwise howsoever.

The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became a definite location, or anything else than an attempted designation of a general route for a railroad, nor did the Secretary of the Interior ever undertake to accept such pretended location as anything else than a designation of a general route, and no right to or interest in any public lands was acquired by said railroad company by reason of any such designation, or attempted designation, or any act of acceptance thereof; and the decision of the Secretary of the Interior, holding that such a general route was authorized by the Act of Congress approved July 27, 1866, was in contravention of a previous decision of a prior Secretary of the Interior to the contrary effect, and subsequently thereto, and prior to the institution of this suit, was reversed by the decision of a subsequent Secretary of the Interior, holding that the said Atlantic and Pacific Railroad Company was not entitled to construct a line to San Francisco, which last mentioned decision still remains in full force and effect, so far as the Interior Department is concerned; and as this defendant is advised and therefore avers, the decision of a Secretary of the Interior undertaking to accept from the Atlantic and Pacific Railroad Company a designation of a general route for a railroad upon the route refered to was unauthorized and void. These respondents ask leave to refer to said decisions, and to file copies thereof herein, if deemed necessary.

That respondents admit and aver that the lands in

suit herein are situated within twenty miles of the pretended line of general route of said Atlantic and Pacific Railroad, and mostly within twenty miles of the Southern Pacific Railroad, and that all thereof are within thirty miles of said Southern Pacific Railroad.

The said respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said Act, or any other Act of Congress, to locate or construct a line of railroad from the crossing of the Colorado River to San Francisco; they are advised and believed, and therefore aver, that under said Act of Congress the respondent, the Southern Pacific Railroad Company alone, was authorized to construct a line of railroad from the crossing of the Colorado River to San Francisco, and to acquire lands under said Act of Congress along and opposite said line.

III.

The said respondents admit that, by Section 23 of an Act of Congress, approved March 3, 1871 (U. S. Stat., Vol. 16, p. 573), entitled, "An Act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road and for other purposes," it was provided as follows:

Sec. 23. That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restric-

tions and conditions, as were granted to said Southern Pacific Railroad Company of California by the Act of July twenty-seven, eighteen hundred and sixty-six; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

IV.

The said respondents admit that, by Act of Congress, approved July 6, 1886, entitled, "An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement, and for other purposes," all the lands and rights to lands in California theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain. They pray leave to refer to said Act, but they deny that the same in anywise operated to forfeit or resume or restore to the public domain any lands as against these respondents. They admit and aver that no part of said Atlantic and Pacific Railroad had, at the time of the passage of said Act of 1886, or has at any time since, been constructed in the State of California.

V.

The said respondents admit that they claim ownership in themselves and their grantees of the lands described in the bill of complaint, and they admit that they claim the same, and aver that they acquired and became entitled to said lands, under and by virtue of the Act of Con-

gress of March 3, A. D. 1871, and the grant to the Southern Pacific Railroad Company therein contained, and they admit that they claim, and they aver the fact to be, that the said Southern Pacific Railroad Company duly accepted the said grant and the terms and conditions thereof, and duly located the route and line of its road between the points in that behalf mentioned in said Act, and within the time and manner in said Act provided on that behalf, such location being made by map or plat thereof, which it filed in the office of the Commissioner of the General Land Office on the 3d day of April, 1871, and they pray leave to refer to said map or plat when the same shall be produced in this suit.

They deny that the located line or route of the said Southern Pacific Railroad Company, as aforesaid, lies upon the same line as any lawfully designated line or general route of the Atlantic and Pacific Railroad Company, and deny that the lands in suit herein would be at any place where the located line of the Southern Pacific Railroad Company and any lawfully designated line of the Atlantic and Pacific Railroad Company would be upon the same general line, or would have intersected each other. They deny that the line or route from Tehachapa Pass, by way of Los Angeles, to a point at or near the Colorado River, located by the Southern Pacific Railroad Company, as aforesaid, was or is upon the same general line as the line or general route attempted to be designated by the Atlantic and Pacific Railroad Company, or any line or route which could have been lawfully designated by said Atlantic and Pacific Railroad Company

under the Act of Congress of July 27, 1866, above referred to, or otherwise.

They deny that any line or route of the Atlantic and Pacific Railroad Company has ever been lawfully located in the State of California, or any limits of the grant for such company ever lawfully fixed or in anywise defined, and deny that the lands in suit fall within any limits of any grant to the Atlantic and Pacific Railroad Company. They deny the allegation in said bill contained that none of said lands were covered by the grant to the Southern Pacific Railroad Company and that none of said lands were of the category of lands which were to be granted to said Company, and each of them, and aver the contrary thereof.

And these respondents further show that, upon the filing by said Southern Pacific Railroad Company of the map or plat of its line on said 3d day of April 1871, as hereinbefore stated, the Secretary of the Interior, under date of April 3, 1871, directed the Commissioner of the General Land Office to withdraw the granted lands along the route of said railroad, as designated on said map, from pre-emption, private entry, and sale, and the Commissioner of the General Land Office, under date of April 21st, 1871, issued instructions to the Registers and Receivers of the proper United States District Land Offices in California to withdraw from sale or location, pre-emption or homestead entry, all the odd-numbered sections of public lands within thirty miles of the said line of said railroad, and these respondents aver that all the lands mentioned in the bill of complaint in this suit which were public lands at the date of such orders for withdrawal,

were thereupon withdrawn according to the said instructions. Certified copies of said orders of withdrawal are hereto annexed, and made part of this answer, marked Exhibit ; a certified copy of the official diagram defining and marking the twenty and thirty miles limits opposite said railroad is herewith filed, and made part of this answer, marked Exhibit .

These respondents aver that the line of route of the Southern Pacific Railroad through said lands had been duly located, and the lands granted to it by said 23rd Section of the said Act of March 3, 1871, had been duly withdrawn from market for the benefit of the respondent, the Southern Pacific Railroad Company, before the said Atlantic and Pacific Railroad Company attempted to locate its general route for its road through or opposite to the said lands, or any part of such general route.

And these respondents aver that the respondent herein, the Southern Pacific Railroad Company, under and in fulfillment of the provisions of the said Acts of Congress hereinbefore cited, duly located, constructed and completed its said railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Colorado River, and Commissioners appointed by the President of the United States duly reported the fact of such completion, and said railroad was, from time to time, duly approved and accepted by the President of the United States.

And these respondents ask leave to refer to and exhibit herein certified Transcripts from the Department of the Interior at Washington to show the action of said Commissioners and of the President of the United States in this matter.

VI.

These respondents allege that the line of route for the said railroad from Tehachapi Pass, by way of Los Angeles, to a point at or near the Colorado River, and for all the route between the terminal points named in said Act of Congress, has been located and constructed by the Southern Pacific Railroad Company in accordance with the said Act of Congress, and they deny that said route route is upon the same general line as the pretended route of the Atlantic and Pacific Railroad in California, and the said respondents claim and aver that the lands described in the said bill of complaint were, and are of the category of lands granted to the said Southern Pacific Railroad Company, and were, and are, sections and parts of sections of odd numbers, and within the limits of said grant.

VII.

These respondents admit that the lands in suit herein are situated within twenty miles of the pretended general or preliminary route of the said Atlantic and Pacific Railroad, but they deny that they are situated within twenty miles, or any other distance, of any lawfully designated route of said railroad company, or within any lawful limits of any grant to said company. They admit that, as to the actual mineral character of said lands, they were in the same condition in respect to minerals in the whole of the year A. D. 1896, that they were and have been all the time from that year down to and including the 3d day of April, 1871, but they are uninformed as to whether there were changes during such period in the knowledge

or understanding, or general knowledge or understanding, as to the mineral character thereof.

VIII.

Replying to Paragraph Eight of the Bill of Complaint, these respondents deny the allegations of said paragraph, and each of such allegations, and aver that their claim to the lands in suit herein is legal and valid and founded upon express grant thereof to the said Southern Pacific Railroad Company from the complainant, and as to some of said lands they ask leave to refer to and show a patent or patents thereof to said Southern Pacific Railroad Company from the Government of the United States, legally issued and duly authenticated.

IX.

These respondents admit that they claim, and they aver the fact to be, that a line of railroad and telegraph from Tehachapi Pass, by way of Los Angeles, to the Colorado River, has been constructed by the respondent, the Southern Pacific Railroad Company, within the time and in the manner provided by said Act of Congress of March 3, 1871, herein referred to, and that Commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said Act, and these respondents ask leave to refer to the reports of the Commissioners now on file in the Department of the Interior in Washington City, and to produce and file herein certified copies of said reports. They deny that any such claims are unfounded, and aver that the Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, did construct the said railroad and telegraph line between said

terminal points within the time and in the manner provided by said Act of Congress, and deny the averments to the contrary thereof in said bill contained.

X.

These respondents admit that, on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California, under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled, "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters pertaining thereto." It admits that said Act is printed in the Statutes of California, 1861, at page 607, and prays to refer thereto.

XI.

These respondents admit that the said corporation, "The Southern Pacific Railroad Company," was formed for the purpose and with the corporate powers, as stated in the Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the Town of San Diego in said State; thence eastward to said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad to the Mississippi River; and they refer to said Articles of Incorporation for the precise contents, purport and effect thereof.

XII.

These respondents aver that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California on that behalf, the said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and the Pajaro Valley Railroad Company, corporations organized and existing under the laws of California, entered into real, and not pretended, articles of consolidation and amalgamation, consolidating and amalgamating their capital stocks, debts, property, assets, and franchises, under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California. They admit and aver that such articles were signed, published and filed as provided by the laws of California.

They pray leave to refer to such articles of consolidation and amalgamation, if material to any purposes of this suit, and to the laws of California, authorizing the same, and to the laws of California affecting the corporations aforesaid, or any of them, and to the amendatory articles of the Southern Pacific Railroad Company filed.

They deny that by any such articles or agreement of consolidation and amalgamation, or by any consolidation or amalgamation, a different capital was made, any substantially new stock issued, or a new or different corporation created, but, on the contrary, they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation. They pray leave to refer to the articles of incorporation of the consolidating companies, if in anywise material to this suit. They al-

lege that said consolidation and amalgamation of said corporations were authorized by the laws of California, and by the laws of the United States so far as applicable, and were, and are, legal and valid, and deny all allegations in said bill to the contrary thereof.

XIII.

These respondents aver that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California on that behalf, the said Southern Pacific Railroad Company, as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to, and the Southern Pacific Branch Railroad Company, a corporation organized and existing under the laws of California, formed for the purpose and with the coporate powers stated in its articles of incorporation of constructing, owning and maintaining a railroad within the States of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company, and entered into articles of consolidation and amalgamation, of which Exhibit "A" attached to the plaintiff's bill is a copy, and that said articles were duly signed, published and filed as required by the laws of California. They pray leave to refer to such consolidation and amalgamation and such articles were real and not pretended, and deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created, but they aver that the corporation there-

after existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation.

As to the contents, purport and effect of the articles of incorporation of the consolidating companies they pray leave to refer to the same if in anywise material to this suit.

These respondents deny that such articles of consolidation and amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California, or were unauthorized or prohibited by the laws of the United States, or were entered into without competent authority, but on the contrary they aver that the consolidation and amalgamation of said railroad companies was made in conformity with the laws of the State of California, whose action in that behalf was fully authorized and recognized by the Congress of the United States, and that such consolidation and amalgamation was and is in all respects valid.

These respondents deny that by entering into said articles of consolidation and amalgamation the said Southern Pacific Railroad Company, named in the Act of Congress of March 3, 1871, forfeited, abandoned or released to the United States all or any part of the lands granted to it by said act of Congress, or all or any rights, grants, franchises or privileges conferred by said act, or all or any right to earn or acquire any and all lands under said act.

XIV.

These respondents admit that the Southern Pacific Railroad Company, which is defendant herein, claims to

have, and they aver that it has, patents issued by the United States to it in due form of law, purporting to convey and conveying to said Company a portion of the lands in suit herein. It avers that said patents were real and not pretended, and were duly recorded in the Recorder's Division in the General Land Office before they were delivered to said Company, and still remained so of record, and since the delivery thereof, the same have been recorded in the Counties of Los Angeles and
in the State of California.

These respondents deny that the lands thus patented are unknown to the complainant, and deny that the patents therefor were issued illegally or without authority of law, or are illegal or void. On the contrary, these respondents allege that said patents are in all respects legal and valid, and they ask leave here to refer to the same, and to present and file as evidence in this suit, duly certified copies thereof, if deemed necessary.

XV.

Replying to Paragraph XV of the complainant's bill, these respondents say that they have no knowledge as to which, if any, of the co-defendants herein claim any right in the lands in suit, or any part or parcel thereof, under or by virtue of an Act of Congress, approved March 3, 1887 (24 Stat., 556), referred to in the bill of complaint, but they aver that none of the defendants other than the Southern Pacific Railroad Company are entitled to such lands or any part thereof, except so far as they may be entitled thereto as mortgagees, grantees or vendees of the Southern Pacific Railroad Company under conveyances, mortgages or agreements from it in that behalf.

XVI.

These respondents admit that the respondents D. O. Mills and Garrit L. Lansing, have a mortgage or deed of trust from the Southern Pacific Railroad Company for the above-described land to secure the payment of certain indebtedness of said defendant railroad company, and that said mortgage is dated April 1, 1875, and is executed in due form of law, and is recorded in Los Angeles and San Bernardino and Ventura Counties, California, where the same has been of record since 1875, but they deny that complainant has any title to said lands, or any part thereof which can be clouded or injuriously or otherwise affected thereby.

XVII.

They admit that the lands described in said bill are to a considerable extent naturally timbered or wooded land and valuable for the timber and wood thereon. While admitting that they claim but denying that they pretend to own an interest in said lands these defendants deny that they or their grantees have ever unlawfully entered on said lands or unlawfully chopped down any timber or trees thereon, and deny that said lands, timber or trees, or any thereof were at any time since the taking effect of the grant to the defendant the Southern Pacific Railroad Company, above referred to the property of the complainant in this suit. They admit and aver that the Southern Pacific Railroad Company and its grantees have at various and divers times carried away timber and trees from said lands and applied the same to their own use, and are now removing from said land wood cut thereon, and are intending to, and unless enjoined there-

from will chop down other trees on said land, but they deny that any such acts were, are or will be in any wise unlawful or have resulted or will or could result in any injury to the complainant.

XVIII.

They admit that the amount in controversy in this suit exceeds the sum or value of five thousand dollars exclusive of interest and costs.

XIX.

They admit and aver that the defendant the Southern Pacific Railroad Company while claiming (but not pretending) to own an interest in said lands, has at various and divers times during the past ten years, by actual (but not pretended) contracts and conveyances sold and conveyed (but not pretended to sell or convey) large portions of said lands to other of the defendants herein, and by itself and its grantees has realized from wood and timber on said lands considerable sums of money, which it and they have appropriated to its and their own use.

XX.

The respondent, the Southern Pacific Railroad Company, further answering states that the schedule hereto annexed, marked Exhibit "B," and made part of this answer, is a correct schedule of all such lands claimed in this suit, as the said respondent has sold prior to the filing of the bill of complaint herein, together with the names of the parties who were the purchasers, and the amounts of money received by the said respondent, upon the contract of sale to each purchaser respectively, and it avers that at the time of such sales and each of them the said defendant Railroad Company was the owner of

the lands so sold, and that it is now the owner of all of such lands which have not been so sold by it.

XXI.

And all of the respondents herein, other than the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, admit and allege that they and each of them claim to be bona fide purchasers for value, from the said Southern Pacific Railroad Company and its grantees, which are also purchasers in good faith, but not otherwise, of all of the lands hereinbefore specifically described and set forth in Schedule "B" as having been sold by the respondent the Southern Pacific Railroad Company, and that they purchased the same in good faith, and for a valuable consideration, believing and still believing that at the time of their said purchase of said lands they were owned by absolute title in fee simple by said Southern Pacific Railroad Company and its said grantees.

That attached hereto and made a part of this answer are several exhibits which respondents ask may be taken as a part of the answer, and referring thereto and to each and every allegation to which said exhibits are pertinent, namely:

Exhibit "A," being certified copy of a letter from Wiliis Drummond, Commissioner of the General Land Office, dated April 21, 1871, to the Register and Receiver, Los Angeles, California, Order of withdrawal of lands within the limits of the Southern Pacific Railroad Company's Branch Line.

Exhibit "B," referred to on page 22 of the Answer, being a statement, under date of July 3, 1890, of the condi-

tion of the books of the Land Department of the Southern Pacific Railroad Company of lands involved in said suit, tabulated under the followings heading: "Contract No. Contract dated. Purchaser. Address. Fraction. Sec. Twp. Rge. Acres. Amount sold for. Surveyed or unsurveyed. A. & P. R. R. Co. Limits. S. P. R. R. Co. Limits. Main, Branch line. Selected or not selected by S. P. R. R. Co. No. and date of selection list. Costs of surveying, selecting and conveying, which is divided into three columns as follows: Surveying fees, selecting, Reg. and Rec. fees, costs of conveying. Remarks.

"Exhibit C. Certified copy of List No. 21 of lands selected by the Southern Pacific Railroad Company within the granted limits of the grant made by the 23d section of the Act of Congress, approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California, Land District.

"Exhibit D. Certified copy of list numbered 25 of lands selected by the Southern Pacific Railroad Company within the indemnity limits grant made by the 23rd section of the Act of Congress approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California, Land District; together with the designation of losses stated as a basis for such selections; also supplemental list of losses.

"Exhibit C 2. Certified copy of a letter to the Commissioner of the General Land Office, January 19th, 1889, by Henry Beard, Attorney for the Southern Pacific Railroad Company of California; also copy of certificate of de-

posit No. 1431 of the National Bank of the Republic, Washington, D. C., dated January 19th, 1889, by said Railroad Company of $12.50, on account of conveying the lands located at the Los Angeles, California, Land Office, at Los Angeles, California, List No. 21.

XXII.

Further answering the respondents deny that when the grant was made to the Southern Pacific Railroad Company by the act of Congress of March 3, 1871, it was found that the line of route which said Company was required to adopt and did adopt, was upon the same general line as the route of the Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific.

Respondents deny that there ever was any general line of route adopted or designated by the Atlantic and Pacific Railroad Company in the State of California, or from the Colorado River to the Pacific Ocean.

Respondents deny that the route of the said Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific Ocean, as said grant was made to the said Company by the said act of Congress of July 27, 1866, or by any act of Congress, or as said route was located or adopted by said Company, was or is upon the same general line as the route of the said Southern Pacific Railroad Company from Tehachapi Pass by the way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to the said Southern Pacific Railroad Company, of March 3, 1871, or as said route was in fact adopted or located or at all; respondents further deny that the lands in suit herein were at the inter-section of said two lines of route or at the place where said

two routes were or are upon the same general lines, and the respondents deny that the said lands or any lands mentioned herein were excluded or deducted from the later grant to the said Southern Pacific Railroad Company.

XXIII.

The respondents deny all and all manner of unlawful combination and confederacy with which they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, but not herein and hereby well and specifically answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these respondents; all of which matters and things these respondents are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor and of Counsel for Respondents.

CREED HAYMOND,

Of Counsel for Respondents.

Dated March 12, 1892.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Respondents. Answer to Amended Bill of Complaint. Joseph D. Redding, Solicitor for Respondents, 33 to 37 New Chronicle Building, San Francisco, Cal. Due service of the within and receipt of a

copy thereof is hereby admitted this 14th day of March, 1892. Joseph H. Call, Solicitor for Complainant. Filed March 14th, 1892. Wm. M. Van Dyke, Clerk.

184

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES,
Complainant,
vs.
SOUTHERN P. R. R. CO.,
And many others,
Respondents.

Order Substituting Jackson A. Graves as Respondent.

In the above entitled cause it appearing that one of the respondents, namely, The Atlantic and Pacific Fibre Importing and Manufacturing Co., Limited, has sold its lands involved in this cause to Jackson Alpheus Graves, and the deed of sale having been exhibited to this Court, and it appearing that said Graves is the proper party respondent instead of said Co.,

Now, therefore, on motion of Jos. D. Redding, solicitor for all of said respondents, it is ordered that Jackson Alpheus Graves be entered as one of the respondents in this cause in the place and stead of the Atlantic and Pacific Fibre Importing & Manufacturing Company (Limited), furthermore ordered that said respondent Graves, by his solicitor Jos. D. Redding, shall have thirty (30) days from the signing hereof, in which to plead, demur or answer to the Bill of Complaint.

ROSS,
Dist. Judge.

[Endorsed]: 184. Circuit Court U. S. of A. Complainant, vs. S. P. R. R. Co. et als., Respts. Order of Substitution of Certain Party Respondent. Filed Apr. 25, 1893. Wm. M. Van Dyke, Clerk.

No. 184.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

Supplemental and Amended Answer to Amended Complaint.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. Mills and Garrit L. Lansing, Trustees; The City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company (Limited), Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Burrell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, V. E. Carson, B. F. Carter, Herry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A.

Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmount Fruit Land Company, George W. Fentress, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealy, Frederick Kenworthy, Richard Kichline, oseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. J. Lanteman, Thomas B. Lawhead, L. B. Lawson, M. Fetra, Stephen L. Leighton, John Robarts and G. L. Mesnager, Executors of the Last Will and Testament of Miguel Leonis, deceased; George Loomis, Marion C. Loop Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathisson, Erza May, Agnus S. McDonald, A. M. Melrose, Mrs. Flossie Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Meyers, D. C. Newcomb, Albert E. Nettleton, North Pasodena Land and Water

Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. H. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, William B. Ralphs, James B. Randol, C. P. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Orwan, S. D. Savage, Jacob Scherer , George W. Seifert, Luciano Sequoia, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Bianbarista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, W. M. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Tallor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysett, George Vilas, Alden R. Vining, Daniel A. Wanger, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie Wicks, Mary C. Williams, C. N. Wilson, R. N. C. Wilson, J. Youngblood and J. A. Graves,

Defendants.

Answer to Amended Complaint.

Now come the respondents in the above entitled cause and for answer to the amended bill in equity, filed herein on the 26th day of September, 1891, against them, purporting to be a bill brought by the United States, by the Attorney General thereof, and signed by Joseph H. Call, as Special Assistant U. S. Attorney, and counsel for complainant, and to so much and such parts of said bill as they are advised it is material for them to make answer unto, answering, say:

I.

That said respondents aver that the Southern Pacific Railroad Company, respondent herein, is a corporation, organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and a citizen of said last mentioned State.

And the said respondents admit that the lands described in said bill were acquired by the United States of America from Mexico, in or about the year 1846, and the title to said lands was confirmed to the United States by the treaty of Guadalupe Hidalgo in the year 1848. The said respondents deny that such lands or any thereof ever since such acquisition or confirmation of title thereof have been, or at the time of, or at any time since, the filing of the bill of complaint in this suit, were or have been, or that they or any of them are now, owned by the United States by title in fee simple or otherwise; they deny that the complainant during said times or at the time of or at any time since the filing of the bill of complaint in this suit was or has been, or that it now is, in possession of said lands or any of them, and allege on the contrary that

the said lands described in the said bill, long before the filing of said bill were granted by the complainant to the respondent, the Southern Pacific Railroad Company, and thereafter were and have been, for the most part, if not entirely, in its possession, or the possession of its grantees, so far as any person or party was in actual possession thereof.

II.

The said respondents admit that by an act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast"; Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said Company to aid in the construction of a railroad and telegraph line in said act described, a large quantity of public lands, but it avers that such grant was made on and subject to the conditions and the limitations in said act mentioned, to which said Act of Congress reference is hereby made. U. S. Stats., Vol. XIV, p. 292. The said respondents admit that sections 3 and 18 of said act of Congress are correctly set forth and recited in said bill; but by reason of the insufficiency of said recitals, this defendant refers to the whole of said Act of Congress.

The said respondents are uninformed as to whether the said Atlantic and Pacific Railroad Company only accepted said grant, and therefore controvert the allegation on that behalf, in the bill herein contained; they admit upon information and belief that the Atlantic and Pacific Railroad Company began to construct a railroad in the State of Missouri, but they deny that it ever proceeded to or did

construct any portion of any railroad in the State of California.

And the said respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground, or designate upon a plat or map the whole of said line of railroad, under or in accordance with said act, from Springfield, Missouri, by way of the points or places named in said act, or in the time or manner provided in said act, or otherwise, to the Pacific Ocean, and deny that it ever lawfully located, or adopted, or designated any part of said line in the State of California; and deny that on or about the day of 1866, or at any other time, said Company did file any such plat in the office of the Commissioner of the General Land Office, and deny that, at that or any such time, any such designation or location of said line of railroad was approved by the Secretary of the Interior, and deny that the odd sections of public lands on each side of said road for thirty miles were withdrawn from market or reserved, and deny that the lands in suit herein, or any of them fell within the twenty mile limits of any such line, or were ever lawfully withdrawn from market or reserved for or for the benefit of said Atlantic and Pacific Railroad Company; and deny that the Atlantic and Pacific Railroad Company ever designated a line of railroad between the Colorado River and the Pacific Ocean by a map thereof, filed in the office of the Commissioner of the General Land Office, or made or filed a map of definite location of a route from the Colorado River to the Pacific Ocean, whether by the most practicable and eligible route, or otherwise howsoever.

The said respondents aver that the said Atlantic and Pacific Railroad Company never made any actual or definite location of its railroad in California, nor constructed any part of a railroad in said State, under or according to the act of Congress approved July 27th, 1866, or any amendments, modifications or supplements thereto, or otherwise howsoever.

The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became an actual or a definite location, or anything else than an attempted or pretended designation of a general route for a railroad from San Francisco to the Needles, and such pretended location or designation of route was a colorable and fraudulent location or designation of an unauthorized and impracticable line. The Secretary of the Interior never undertook to accept such pretended location or designation as anything else than a designation of a general route, and no right to or interest in any public lands was or could be acquired by said Railroad Company by reason of any such attempted location or designation or any act of acceptance thereof; and the decision of a Secretary of the Interior holding that such a general route was authorized by the act of Congress, approved July 27, 1866, was in contravention of a previous decision of a prior Secretary of the Interior to the contrary effect, and subsequently thereto, and prior to the institution of this suit was reversed by the decision of a subsequent Secretary of the Interior, holding that the said Atlantic and Pacific Railroad Company was not entitled to construct or locate a line to San Francisco, which last mentioned

decision still remains in full force and effect, so far as the Interior Department is concerned; and as these defendants are advised and believe, and therefore aver, the decision of a Secretary of the Interior undertaking to accept from the Atlantic and Pacific Railroad Company a designation of a route for a railroad upon the route referred to, was unauthorized and void, and in violation of the rights acquired by and vested in the Southern Pacific Railroad Company.

These respondents ask leave to refer to said decisions, and to file copies thereof, herein, if deemed necessary.

Respondents admit and aver that the greater part, but not all the lands in suit herein are situated within twenty miles of the pretended line of general route of said Atlantic and Pacific Railroad from San Francisco to the Needles, and the greater part, but not all thereof are situated within twenty miles of the Souther Pacific Railroad, and that all thereof are within thirty miles of said Southern Pacific Railroad.

The said respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said act, or any other act of Congress to locate or construct a line of railroad from the crossing of the Colorado River to San Francisco; they are advised and believe, and therefore aver that under said act of Congress, the respondent, the Southern Pacific Railroad Company, alone was authorized to construct a line of railroad from the crossing of the Colorado River to San Francisco, and to acquire lands under said act of Congress along and opposite said line, and that the only right which the Atlantic and Pacific Railroad Company ever acquired to construct any

line of railroad in the State of California was the right to construct a road from the crossing of the Colorado River by the most practicable and eligible route to the Pacific Ocean, which route was not on the line pretended to be designated by the said Atlantic and Pacific Railroad Company, but to the southerly thereof, and through the San Gorgonio Pass to the Pacific in the vicinity of San Pedro.

III.

The said respondents admit that by Section 23 of an act of Congress, approved March 3, 1871 (U. S. Stat., Vol. 16, p. 573), entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road and for other purposes," it was provided as follows:

"Sec. 23. That, for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

IV.

The said respondents admit that by the act of Congress approved July 6, 1866, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company, to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain. They pray leave to refer to said act, but they deny that the same in anywise operated to forfeit or resume or restore to the public domain any lands as against these respondents. They admit and aver that no part of said Atlantic and Pacific Railroad had at the time of the passage of said act of 1886, or has at any time since, been constructed in the State of California.

V.

The said respondents admit that they claim ownership in themselves and their grantees of the lands described in the bill of complaint, and they admit that they claim the same, and aver that they acquired and became entitled to said lands, under and by virtue of said act of Congress of March 3, A. D. 1871, and the grant to the Southern Pacific Railroad Company therein contained, and they admit that they claim, and they aver the fact to be, that the said Southern Pacific Railroad Company duly accepted the said grant and the terms and conditions thereof, and duly designated and located the route and line of its road between the points in that behalf,

mentioned in said act, and within the time and manner in said act provided on that behalf, such designation and location being made by map or plat thereof, which it filed in the office of the Commissioner of the General Land Office on the 3d day of April, 1871, and they pray leave to refer to said map or plat when the same shall be produced in this suit. They aver that such map or plat was duly accepted by the Secretary of the Interior as designating the line of its road between the points mentioned in said act and in accordance with said act of Congress, and for twenty years and over, the Interior Department held and conclusively adjudged that the grant to said Southern Pacific Railroad Company under said act became effective and attached to the lands granted thereby and involved in this suit, on the 3rd day of April, 1871, and during all that period the transactions between the complainant and the said Southern Pacific Railroad Company were based upon that claim by the railroad company, and its acceptance and adoption by the complainant; and the transactions between said Railroad Company and the other defendants in respect to lands involved in this suit, were and have been based upon such action, determination and rulings of the Interior Department of the United States. And they aver that afterwards maps and plats were filed in the office of the Commissioner of the General Land Office of its line of railroad, as built from a point at or near Tehachapi Pass, by way of Los Angeles to the Colorado River, under and in pursuance of the provisions of said act of March 3, 1871, such last mentioned maps and plats having been so filed on the following dates, viz.:

Section 1, May 7, 1874.

Section 2, November 13, 1875.

Section 3, July 19, 1876.

Section 4, February 28, 1877.

Section 5, December 28, 1877.

They deny that the located or designated line of route of the said Southern Pacific Railroad Company, as aforesaid, lies upon the same line as the attempted or pretended line of route, or as any lawfully designated or located line of route of the Atlantic and Pacific Railroad Company, and deny that the lands in suit herein would be or are at any place where the designated and located line of the Southern Pacific Railroad Company aforesaid, and any lawfully designated or located line of the Atlantic and Pacific Railroad Company would be or are upon the same general line, or would have intersected or intersect each other. They deny that if the Southern Pacific Railroad Company had (as it did) designated its line of route from Tehachapi Pass, by way of Los Angeles to a point at or near te Colorado River, as claimed by these respondents, or between such terminal points at all, that such route would have been upon the same general line as the pretended route of the Atlantic and Pacific Railroad Company as alleged in said bill to have been located by it or any line or route which could have been lawfully designated or located by said Atlantic and Pacific Railroad Company under the act of Congress of July 27, 1866, above refererd to, or otherwise.

They deny that any line or route of the Atlantic and Pacific Railroad Company has ever been lawfully located or designated in the State of California, or any limits of

the grant for such Company ever lawfully fixed or in any wise defined or ascertained, and deny that the lands in suit fell or fall within any limits of any grant to the Atlantic and Pacific Railroad Company. They deny the allegation in said bill contained, that none of said lands were covered by the grant to the Southern Pacific Railroad Company, and that none of said lands were of the category of lands which were to be granted to said Company, and each of them, and aver the contrary thereof.

And these respondents further show that upon the filing by said Southern Pacific Railroad Company of the map or plat of its line on said 3d day of April, 1871, as hereinbefore stated, the Secretary of the Interior, under date of April 3, 1871, directed the Commissioner of the General Land Office to withdraw the granted lands along the route of said railroad, as designated on said map from pre-emption, private entry and sale, and the Commissioner of the General Land Office under date of April 21st, 1871, issued instructions to the Registers and Receivers of the proper United States District Land Offices in California to withdraw from sale or location, pre-emption or homestead entry all the odd numbered sections of public lands within thirty miles of the said line of said railroad, and these respondents aver that all the lands mentioned in the bill of complaint in this suit which were public lands at the date of such orders for withdrawal, were thereupon withdrawn according to the said instructions. Certified copies of said orders of withdrawal are hereto annexed and made part of this answer, marked Exhibit "A," a certified copy of the official diagram defining and marking the twenty and thirty miles limits op-

posite said Railroad is herewith filed and made part of this answer, marked Exhibit

These respondents aver that the line of route of the Southern Pacific Railroad through said lands had been duly located, and the lands granted to it by said 23rd section of the said act of March 3, 1871, had been duly withdrawn from market for the benefit of the respondent, the Southern Pacific Railroad Company, before the said Atlantic and Pacific Railroad Company attempted or pretended to designate or locate its general route or line for its road through or opposite to the said lands, or any part of such general route.

And these respondents aver that the respondent herein, the Southern Pacific Railroad Company, under and in fulfilment of the provisions of the said acts of Congress, hereinbefore cited, duly located, constructed and completed its said railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Colorado River, and Commissioners appointed by the President of the United States duly reported the fact of such completion, and said railroad was from time to time duly approved and accepted by the President of the United States, and maps thereof duly filed in the General Land Office, as above stated.

And these respondents ask leave to refer to and exhibit herein, certified Transcripts from the Department of the Interior at Washington to show such maps, and the action of said Commissioners and of the President of the United States and the Interior Department in this matter.

VI.

These respondents allege that the line of route for the said Railroad from Tehachapi Pass, by way of Los Angeles, to a point at or near the Colorado River and for all the route between the terminal points named in said act of Congress, has been located and constructed by the Southern Pacific Railroad Company in accordance with the said act of oCngress, and they deny that said line of route is upon the same general line as the pretended route of the Atlantic and Pacific Railroad in California, and the said respondents claim and aver that the lands described in the said bill of complaint were and are of the category of lands granted to the said Southern Pacific Railroad Company, and were, and are, sections and parts of sections of odd numbers, and within the limits of said grant.

VII.

These respondents admit that the greater part, but not all of the lands in suit herein, are situated within twenty miles of the pretended general or preliminary route of the said Atlantic and Pacific Railroad from San Francisco to the Needles, but they deny that they are situated within twenty miles or any other distance, of any lawfully designated or located route or line of route of said railroad company or within any lawful limits of any grant to said Company. They admit that as to the actual mineral character of said lands they were in the same condition in respect to minerals in the whole of the year A. D. 1866, that they were and have been all the time from that year down to and including the 3d day of April, 1871, but they are uninformed as to whether there were changed during such period in the knowledge or under-

standing, or general knowledege or understanding as to the mineral character thereof.

VIII.

Replying to paragraph eight of the Bill of Complaint, these respondents deny the allegations of said paragraph, and each of such allegations, and aver that their claim to the lands in suit herein is legal and valid, and founded upon express grant thereof to the said Southern Pacific Railroad Company, for and upon a full and executed consideration from the complainant, and as to some of said lands they ask leave to refer to and show a patent or patents thereof to said Southern Pacific Railroad Company from the Government of the United State, legally issued and duly authenticated.

And these defendants further say, that so far as the right of way of the Southern Pacific Railroad Company, one hundred feet in width on each side of its railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River and its grounds for station buildings, work shops, depots, machine shops, switches, side tracks, turn tables and water stations are concerned, it claims and is entitled to the same under and by virtue of the provisions of Section 23 of the act of March 3, 1871, hereinabove referred to, which conferred upon the Southern Pacific Railroad Company of California all the rights, grants and privileges granted to said Southern Pacific Railroad Company of California, by the act of July 27th, 1866, including those specifically mentioned and referred to in Section 2 of said last mentioned act; and it avers that at the time the pretended line of the Atlantic and Pacific Railroad Company, from San Fran-

cisco to the Needles, is pretended to have been designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, the United States did not have full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims or rights, to the said right of way one hundred feet in width on each side of said Railroad of said Southern Pacific Railroad Company, or such grounds for station buildings, work shops, depots, machine shops, switches, side tracks, turn tables and water stations, but such right of way and lands had been reserved, granted and appropriated to and for the Southern Pacific Railroad Company, and were subject to its claims and rights for the purposes above stated, and no right or claim of the Atlantic and Pacific Railroad Company, present or prospective thereto, or in respect thereof, ever did attach or could have attached thereto, or to any part thereof.

IX.

These respondents admit that they claim, and they aver the fact to be, that a line of railroad and telegraph from Tehachapi Pass by way of Los Angeles to the Colorado River has been constructed by the Southern Pacific Railroad Company within the time, and in the manner provided by said act of Congress of March 3, 1871, herein referred to, and that Commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said act, and these respondents ask leave to refer to the reports of the Commissioners, now on file in the Department of the Interior in Washington City, and to produce and file herein certified copies of said reports.

They deny that any such claims are pretences, or are unfounded and aver that the Southern Pacific Railroad Company named in said act of Congress of March 3, 1871, did construct the said Railroad and Telegraph line between said terminal points within the time and in the manner provided by said act of Congress, and deny the averments to the contrary thereof in said bill contained.

X.

These respondents admit that on or about the 2d day of December, 1865 a corporation was organized under the laws of the State of California, under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto." It admits that said act is printed in the Statutes of California, 1861, at page 607, and prays to refer thereto.

XI.

These respondents admit that the said corporation, "The Southern Pacific Railroad Company," was formed for the purpose and with the corporate powers, as stated in the Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego, in said State; thence eastward through said County of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad to the Mississippi River; and they refer to said Articles of

Incorporation for the precise contents, purport and effect thereof.

XII.

These respondents aver that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California on that behalf, the said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and the Pajaro Valley Railroad Company, corporations organized and existing under the laws of California, entered into real, but they deny that they entered into pretended, articles of consolidation and amalgamation, consolidating and amalgamating their capital stocks, debts, property, assests and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California. They admit and aver that such articles were signed, published and filed as provided by the laws of California.

They pray leave to refer to such articles of consolidation and amalgamation, if material to any purposes of this suit, and to the laws of California, authorizing the same, and to the laws of California affecting the corporations aforesaid or any of them, and to the amendatory articles of the Southern Pacific Railroad Company filed . They deny that by such articles or agreement of consolidation and amalgamation, or by any consolidation or amalgamation a different capital was made, any substantially new stock issued, or a new or different corporation created, but on the contrary, they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing

corporations and not a newly created corporation. They pray leave to refer to the Articles of Incorporation of the consolidating companies if in any wise material to this suit. They allege that said consolidation and amalgamation of said corporations were authorized by the laws of California and by the laws of the United States, so far as applicable, and were, and are, legal and valid, and deny all allegations in said bill to the contrary thereof; they deny that such consolidation and amalgamation was unauthorized by the laws of the State of California or without the consent of said State, or was unauthorized by the laws of the United States, or without authority from the United States, or was, or is, illegal or void.

XIII.

These respondents aver that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California on that behalf, the said Southern Pacific Railroad Company, as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to and the Southern Pacific Branch Railroad Company, a corporation organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its articles of incorporation of constructing, owning and maintaining a railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company, and entered into articles of consolidation and amalgamation of which Exhibit "A" attached to the plaintiff's bill is a copy, and that said

articles were duly signed, published and filed as required by the laws of California. They pray leave to refer to such articles so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation were real and not pretended, and deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not merely a created corporation.

As to the contents, purport and effect of the articles of incorporation of the consolidating companies, they pray leave to refer to the same if in any wise material to this suit; and they pray leave to refer to the laws of the State of California as existing in and prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of that State.

These respondents deny that such articles of consolidation and amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California, or were unauthorized or prohibited by the laws of the United States, or were entered into without authority from the Congress of the United States, or without other competent authority, but on the contrary, they aver that the consolidation and amalgamation of said railroad companies was made in conformity with the laws of the State of California, whose action in that behalf was fully

authorized and recognized by the Congress of the United States, and that such consolidation and amalgamation was and is in all respects valid.

These respondents deny that by entering into said articles of consolidation and amalgamation the said Southern Pacific Railroad Company named in the Act of Congress of March 3, 1871, forfeited, abandoned or released to the United States all or any part of the lands granted to it by said Act of Congress, or all or any rights, grants, franchises or privileges conferred by said Act, or all or any right to earn or acquire any and all lands under said Act.

XIV.

These respondents admit that the Southern Pacific Railroad Company, which is defendant herein, claim to have, and they aver that it has, patents issued by the United States to it in due form of law, purporting to convey and conveying to said company a portion of the lands in suit herein. It avers that said patents were real, and not pretended, and were duly recorded in the General Land Office before they were delivered to said company, and still remained so of record, and since the delivery thereof the same have been recorded in the County of Los Angeles, and in the State of California.

These respondents deny that the lands thus patented are unknown to the complainant, and deny that the patents therefor were issued illegally or without authority of law, or are illegal or void. On the contrary, these respondents allege that said patents are in all respects legal and valid, and they ask leave here to refer to the

same, and to present and file as evidence in this suit duly certified copies thereof, if deemed necessary.

XV.

Replying to paragraph XV of the complainant's bill, these respondents admit that the defendants and respondents other than the Southern Pacific Railroad Company claim to be and they and each of them aver that they are in each and every instance bona fide purchasers for value received, without notice, from the Southern Pacific Railroad Company, a corporation named in said Act of Congress of March 3, 1871; and they further aver that the time of the purchase in each instance by said respondents and defendants, and each of them, from the said Southern Pacific Railroad Company it set forth in Exhibit "B," hereto attached and made part of this answer, and also copies of the deeds and parties to the deeds and contracts of sale and the contents thereof are hereto attached and marked Exhibits "G' 'and "H" and made a part of this answer. That in said Exhibit "B" is also given the date and day of each purchase made by said defendants and respondents and each of them. That at the time the respondents other than the Southern Pacific Railroad Company purchased said lands as are set forth in said Exhibit "B" said Southern Pacific Railroad Company, the vendor, at that time, was the owner and seized in fee of said lands, and said respondents entered into the possession of the said lands, all of which are involved in this suit, under said purchase, and the consideration in each instance paid by the said respondents to the said Southern Pacific Railroad Company, which appears in each instance opposite the name of each respondent in said Ex-

hibit "B," was a bona fide one, and was paid truly and in a bona fide manner and without notice at the time of said payment, or at any time prior thereto, in each instance. And said respondents other than the Southern Pacific Railroad Company aver that they have no knowledge as to which, if any, of the co-respondents and co-defendants herein claim any right in the lands in suit, or any part of parcel thereof, under or by virtue of an Act of Congress approved March 3, 1887 (24 Stat., 556), referred to in the Bill of Complaint.

XVI.

These respondents admit that the respondents D. O. Mills and Garrit L. Lansing have a mortgage or deed of trust from the Southern Pacific Railroad Company for the above described lands to secure the payment of certain indebtedness of said defendant railroad company, and that said mortgage is dated April 1, 1875, and is executed in due form of law, and is recorded in Los Angeles and San Bernardino and Ventura Counties, California, where the same has been of record since 1875, but they deny that complainant has any title to said lands, or any part thereof, which can be clouded or injuriously or otherwise affected thereby.

XVII.

They admit that the lands described in said bill are to a considerable extent naturally timbered or wooded lands, and valuable for the timber and wood thereon. While admitting that they claim, but deny that they pretend to own, an interest in said lands, these defendants deny that they or their grantees have ever unlawfully entered on said lands or unlawfully chopped down any

timber or trees thereon, and deny that said lands, timber or trees, or any thereof, were at any time since the taking effect of the grant to the defendant, the Southern Pacific Railroad Company above referred to, the property of the complainant in this suit. They admit and aver that the Southern Pacific Railroad Company and its grantees have at various and divers times carried away timber and trees from said lands and applied the same to their own use, and are now removing from said land wood cut thereon, and are intending to and, unless enjoined therefrom, will chop down other trees on said land, but they deny that any such acts were, are or will be in anywise unlawful or have resulted or will or could result in any injury to the complainant.

XVIII.

They admit that the amount in controversy in this suit exceeds the sum or value of five thousand dollars, exclusive of interest and costs.

XIX.

They admit and aver that the defendant, the Southern Pacific Railroad Company, while claiming (but not pretending) to own an interest in said lands, has at various and divers times during the past ten years by actual (but not pretended) contracts and conveyances sold and conveyed (but not pretended to sell or convey) large portions of said lands to other of the defendants herein, and by itself and its grantees has realized from wood and timber on said lands considerable sums of money, which it and they have appropriated to its and their own use.

XX.

The respondent, the Southern Pacific Railroad Company, further answering, states that the schedule hereto annexed, marked "Exhibit B" and made part of this answer, is a correct schedule of all such lands claimed in this suit as the said respondent has sold prior to the filing of the Bill of Complaint herein, together with the names of the parties who were the purchasers, and the amounts of money received by the said respondent, upon the contract of sale to each purchaser, respectively; and it avers that at the time of such sales, and each of them, the said defendant railroad company was the owner of the lands so sold, and that it is now the owner of all of such lands which have not been so sold by it.

XXI.

And all of the respondents herein, other than the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, admit and allege that they and each of them claim to be bona fide purchasers, for value, from the said Southern Pacific Railroad Company and its grantees, also purchasers in good faith, but not otherwise, of all of the lands hereinbefore specifically described and set forth in Schedule "B" as having been sold by the respondent, the Southern Pacific Railroad Company, and that they purchased the same in good faith and for a valuable consideration, believing, and still believing, that at the time of their said purchase of said lands they were owned by absolute title in fee simple by said Southern Pacific Railroad Company and its said grantees.

That attached hereto and made a part of this answer

are several exhibits which respondents ask may be taken as a part of the answer, and referring thereto and to each and every allegation to which said exhibits are pertinent, namely:

Exhibit "A," being certified copy of a letter from Drummond, Commissioner of the General Land Office, dated April 21, 1871, to the Register and Receiver Los Angeles, California, Order of withdrawal of lands within the limits of the Southern Pacific Railroad Company's Branch Line.

(Exhibit "B.")

Refererd to on page 22 of the Answer, being a statement, under date of July 3, 1890, of the condition of the books of the Land Department of the Southern Pacific Railroad Company of lands involved in said suit, tabulated under the following headings: "Contract No. Contract dated. Purchaser. Address. Fraction. Sec. Twp. Rge., Acres. Amount sold for. Surveyed or unsurveyed. A. & P. R. R. Co. Limits. S. P. R. R. Limits. Main, Branch Line. Selected or not selected by S. P. R. R. Co. No. and date of selection lists. Costs of surveying, selecting and conveying, which is divided into three columns, as follows: Surveying fees, selecting Reg. and Rec. fees, costs of conveying. Remarks."

Exhibit "C," certified copy of List No. 21 of lands selected by the Southern Pacific Railroad Company within the granted limits of the grant made by the 23rd section of the Act of Congress approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California, Land District.

Exhibit "D," certified copy of list numbered 25 of lands selected by the Southern Pacific Railroad Company within the indemnity limits grant made by the 23rd section of the Act of Congress approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California, Land District, together with the designation of losses stated as a basis for such selections; also supplemental list of losses.

Exhibit "C2," certified copy of a letter to the Commissioner of the General Land Office, January 19th, 1889, by Henry Beard, Attorney for the Southern Pacific Railroad Company of California; also copy of certificate of deposit No. 1431 of the National Bank of the Republic, Washington, D. C., dated January 19th, 1889, by said Railroad Company, of $12.50 on account of conveying the lands located at the Los Angeles, California, Land Office, at Los Angeles, California, List No. 21.

XXII.

Further answering, the respondents deny that when the grant was made to the Southern Pacific Railroad Company by the Act of Congress of March 3, 1871, it was found that the line of route which said company was required to adopt, and did adopt, was upon the same general line as the route of the Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific.

Respondents deny that there ever was any general line of route of road adopted or designated by the Atlantic and Pacific Railroad Company in the State of California, or from the Colorado River to the Pacific Ocean.

Respondents deny that the route of the said Atlantic

and Pacific Railroad Company from Springfield, Missouri, to the Pacific Ocean, as said grant was made to the said Company by the said Act of Congress of July 27, 1866, or by any act of Congress, or as said route may have been in anywise located or adopted by said Company (if it ever was so located or adopted), was, or is, upon the same general line as the route of the said Southern Pacific Railroad Company from Tehachapi Pass by way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to the said Southern Pacific Railroad Company, of March 3, 1871, or as said route was in fact adopted or located, or at all; respondents further deny that the lands in suit herein were at the intersection of any such two lines of route or at the place where any such two routes were or are upon the same general lines, and the respondents deny that the said lands, or any lands mentioned herein, were excluded or deducted from the grant to said Southern Pacific Railroad Company under said act of March 3, 1871.

XXIII.

And these defendants, further answering, say that the Southern Pacific Railroad Company, to which the grant of lands was made by the Act of Congress of March 3, 1871, still exists under the laws of the State of California under which the same was created, and has at no time caused to exist or surrender or lost the rights conferred by said act, and is the same corporartion which is made party defendant to this bill, and that any and all amalgamations or consolidations therewith of other railroad corporations organized under the laws of the State of California have been made in pursuance of and subject to the

terms and provisions of the laws of the State of California, and by due and legal authority, and that the United States, by constant and continued action of all branches of the Government, has recognized the continued existence of the Southern Pacific Railroad Company as the grantee of lands under the Act aforesaid, and has always claimed and exercised, and still claims and exercises, against the Southern Pacific Railroad Company, notwithstanding the amalgamations from time to time of various other railroad corporations of the State of California with the Southern Pacific Railroad Company originally constituted under the laws of said State, all the rights conferred upon the United States, and has demanded and enjoyed the benefit, and still demands and enjoys the benefit, of the performance of all the duties imposed upon the Southern Pacific Railroad Company under or by virtue of the said act of Congress, and each thereof, and has claimed and exercised, and still claims and exercises, the rights and has demanded and enjoyed the benefit of and still demands and enjoys the benefit of the performance of the duties prescribed in said act of Congress in respect of the line constructed by the Southern Pacific Railroad Company from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River, and is estopped in law and equity from asserting any claim that the Southern Pacific Railroad Company as now existing was not the same corporation named and designated in said Act or that the said railroad was not constructed by the grantee named therein, and that it could not in any event be adjudged in favor of the United States in this suit or otherwise that the said railroad was

not constructed by the grantee named in said Act or that the Southern Pacific Railroad Company as now existing is not entitled to the benefits of the grants named therein without the surrender and abandonment by the United States of its claim to the exercise by it of the rights and privileges heretofore claimed and exercised by it, and to the enjoyment by it of the benefit of the performance of the public duties heretofore claimed and enjoyed by it in respect of the Southern Pacific Railroad Company as from time to time existing and in respect of the said road under and by virtue of the Act of Congress above referred to.

XXIV.

And these defendants, further answering, say that the United States cannot now restore these defendants to the same position in respect to the land grant to the Southern Pacific Railroad Company under said act of March 3, 1871, and its rights and claims to indemnity for lost lands which it would have had if the United States had not accepted its selections of lands in controversy in this suit and issued patents to the said defendant for such of said lands as have been patented to it, inasmuch as since the date of said patents the United States has permitted other parties to acquire claims to and has granted other parties patents for valuable lands within the indemnity limits of its road under said Act of March 3, 1871, which would prevent this Company from making now as favorable indemnity selections as it might then have made, and because the acceptance of such selections and issue of such patents has delayed the exercise by said Company of the right of selection of indemnity lands which this

Company would have been entitled to, and has deprived it of the use and benefit of the lands which might have been derived thereunder at times when sales thereof might have been made upon terms to the defendant far more favorable than any upon which like lands could now be sold.

XXV.

And these defendants, further answering, say, that heretofore and on or about the first day of April, 1875, the Southern Pacific Railroad Company executed to the defendant D. O. Mills and one Lloyd Tevis a mortgage bearing date on that day to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and market Exhibit "E," and prayed to be taken as a part of this answer. That negotiable mortgage bonds to very large amounts were from time to time between said 1st day of April, 1875, and September 25, 1891, duly issued thereunder and sold to and purchased by the public in good faith and for full and valuable consideration, and that of such bonds there are now outstanding in the hands of bona fide holders thereof for value bonds to the amount at their par value of upwards of thirty-one million dollars. That Garrit L. Lansing, named as defendant in this suit, has been duly substituted as mortgage trustee thereunder in place and stead of said Tloyd Levis, named as a trustee in said original mortgage.

XXVI.

And these defendants, further answering, say, that that heretofore and on or about the 25th day of August,

1888, and before the institution of this suit, the said Southern Pacific Railroad Company executed to the Central Trust Company of New York, a corporation created organized and existing under and by virtue of the laws of the State of New York and having its principal place of business in the City and County of New York, a further mortgage or deed of trust bearing date on said 25th day of August, 1888, to secure a proposed issue of negotiable Mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "F," and prayed to be taken as a part of this answer. That negotiable Mortgage Bonds to large amounts were from time to time subsequent to said 25th day of August, 1888, and prior to the commencement of this suit, duly issued thereunder and sold to and purchased by the public in good faith, and for full and valuable consideration, and that of such bonds so issued prior to the institution of this suit bonds to the about of Six million, nine hundred and eighty-one thousand Dollars are now outstanding in the hands of bona fide holders thereof for value, and that the said Central Trust Company of New York is a necessary party to this suit; and these defendants pray the like effect for the foregoing allegations as if non-joinder of such Central Trust Company of New York as a party to this suit were specially pleaded herein.

XXVII.

And these defendants, further answering, say, that being required to do so by the United States, the said Southern Pacific Railroad Company has from time to time paid the following fees and charges to the United

States upon and in respect of the lands in controversy in this suit, that is to say:

the sum of Six thousand one hundred and thirty-five and 34-100ths ($6,135.34) Dollars as and for surveying and registers and receivers and surveying fees required by the United State in respect of said lands, and that the United States could not in any event or under any circumstances be entitled to recover, maintain, or assert any claim to the said lands or cancel or have cancelled the patents heretofore issued to said Company in respect thereof until it should have repaid to said Railroad Company the amounts above mentioned with interest, and in all other respects restored the Company to the like position in all respects which it occupied at the time when such selections of said lands by the Company were accepted and approved and at the time when the patent therefor was issued to it as aforesaid by the United States.

XXVIII.

The respondents deny all and all manner of unlawful combination and confederacy with which they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, but not herein and hereby well and specifically answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these respondents ,all of which matters and things these respondents are ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and pray to be hence

dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor and of Counsel for Respondents.

HARVEY S. BROWN, R.,

Of Counsel for Respondents.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainants, vs. S. P. R. R. Co. and others. Respondents' AMENDED ANSWER. Joseph D. Redding, Solicitor for Respondents, 33-37 Chronicle building, San Francisco, Cal. Rec'd copy hereof (except exhibits) May 31, '93. Joseph H. Call, Spl. Asst. U. S. Atty. Received May 31st, 1893. Wm. M. Van Dyke, Clerk. Filed June 12, 1893. Wm. M. Van Dyke, Clerk.

At a stated term, to wit, the January term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the Court Room in the City of Los Angeles on Monday, the twelfth day of June, in the year of our lord one thousand eight hundred and ninety-three:

Present: The Honorable ERSKINE M. ROSS, District Judge.

No. 184.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD Company, et al.,
Defendants.

Order Allowing Amended Answer to be Filed that Replication Stand, etc.

Now comes George J. Denis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant U. S. Attorney for the Southern District of California, of counsel for complainants, and on behalf of complainants submit defendants' motion for leave to file an amended answer in the above entitled action to the Amended Bill of Complaint, heretofore filed by complainants, and thereupon it is ordered that the amended answer of the defendants heretofore presented may be filed upon the condition that the Replication heretofore filed to the original answer shall stand as the Replication to such Amended Answer, and that all testimony and evidence heretofore taken shall not in any way be prejudicial, but shall be deemed to have been taken with the same force and effect as if said answer had not been amended.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said Court June 12th, 1893, in the cause entitled The United States of America, Complainants, vs. The Southern Pacific Rail-

road Company, et al., Defendants, No. 184, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 19th day of July, A. D. 1894.

[Seal.] WM. M. VAN DYKE, Clerk.

(Endorsed): No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et al. Certified copy of order allowing filing of amended answer. Filed Jul. 19, 1894. Wm. M. Van Dyke, Clerk.

Case No. 184.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. Mills and Garrit L. Lansing, Trustees; The City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company (Limited), Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, Willam H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred. Chandler, Walter S. Chaffee, J. N.

Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clerk, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull S,tefano Cuneo, J. H. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmount Land and Water Company, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John A. Jones, A. S. Joseph, John Kenealy, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman,T. B. Lawhead, L. B. Lawson,Lawson M. La Fetra, Stephen S. Leighton, John Robarts and George L. Mesnager, Executors of the Last Will and Testament of Miguel Leonis, deceased; George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Erza

May, Agnus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelon, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shripser, David Shirpser, Max Shripser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, W. M. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweenew, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson,

Robert C. N. Wilson, J. Youngblood, and Jackson A. Graves.

Defendants.

Decree in Equity.

This cause, having been regularly set for to-day, was, on this 25th day of June, 1894, duly heard in open Court.

The plaintiff appeared by Mr. George J. Denis, United States Attorney, and Mr. Joseph H. Call, Special Attorney. The defendants appeared by Mr. William F. Herrin, Mr. L. E. Payson, and Mr. Joseph D. Redding, their solicitors. Mr. D. L. Russell and Mr. Horace Bell also appeared as solicitors for the executors of the estate of Miguel Leonis, deceased, defendants.

The testimony having been taken and all the evidence introduced, and the cause having been duly argued and submitted, it is by the Court now

Ordered, adjudged and decreed: That the United States of America is the owner, by title in fee simple absolute, of all the sections of land designated by odd numbers in Townships Three (3) and Four (4) North, Ranges Five (5), Six (6), and Seven (7), West, Township One (1) North; Ranges Sixteen (16), Seventeen (17), and Eighteen (18) West, Township Six (6); and South three-fourths of Township Seven (7) North, Ranges Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), and Nineteen (19) West. Also all of the sections of land designated by odd numbers, as shown by the public surveys, embraced within the Townships from number Two (2) North to number

Five (5) North, both numbers included, and Ranges from number Eight (8) West to number Eighteen (18) West, both numbers included (except Sections Twenty-three (23) and Thirty-five (35) in Township Four (4) North, Range Fifteen (15) West, and except Sections One (1), Eleven (11), and Thirteen (13), in Township Three (3), North, Range Fifteen (15) West); also the unsurveyed lands within said area which will be designated as odd numbered sections when the public surveys of the United States shall have been extended over such townships. All the lands are herein described as of San Bernardino Base and Meridian, and are situated in the State of California.

And the defendants are, and each of them is, forever enjoined and restrained from chopping upon, or carrying from, the said lands any trees, timber or wood, and from claiming or asserting any right, title or interest in or to the said lands, or any thereof.

It is further ordered, adjudged and decreed that each and every patent heretofore issued by the United States to the Southern Pacific Railroad Company in pursuance of the act of Congress approved July 27, 1866 (14 Stats., 292), and the act entitled "An act to incorporate the Texas & Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871 (16 Stats., 573), and either of said acts, and all acts amendatory and supplemental to either thereof, purporting to convey any of the lands hereinbefore described, to said Southern Pacific Railroad Company, is null, void, and vacated.

It is further ordered, adjudged, and decreed that each

and every patent which has heretofore issued by the United States to the defendants or to any of them, in pursuance of the pre-emption, homestead, or any other general land law of Congress, is excepted from and in nowise affected by the provisions of this decree; nor shall this decree in anywise affect any rights which the defendants or any of them, other than the said Southern Pacific Railroad Company, now have or may hereafter acquire in, to, or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March 3, 1887; nor shall this decree in anywise affect any right which the United States may have to hereafter recover from said Southern Pacific Railroad Company the ordinary government price for any of said lands patented any of the defendants herein in good faith, and which may determine have been sold by said Company to either or any of the defendants herein in god faith, and which may be patented to such bona fide purchasers in pursuance of said act of March 3, 1887, if any such there be; nor shall this decree in anywise affect any right, title or interest which the defendant Southern Pacific Railroad Company now had or may hereafter acquire to any right of way for one hundred feet in width on each side of the main track of its road, to station-buildings, work-shops, depots, machine-shops, switches, sidetracks, turn-tables, water stations, and all grounds necessary for the same.

And it is further ordered, adjudged and decreed that

the plaintiff have and recover its costs of this suit, taxed at 1,924 05-100 dollars.

Done and signed this 19th day of July, 1894.

ROSS,

Dist. Judge.

Decree entered and recorded July 19th, 1894.

WM. M. VAN DYKE, Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et a . Final Decree. Filed Jul. 19, 1894. Wm. M. Van Dyke, Clerk.

Testimony of D. G. Scofield.

D. G. SCOFIELD, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

(The testimony of this witness was taken on October 3d, the witness Lansing being temporarily withdrawn, and is placed at this point in the record for convenience in signing.)

Direct Examination.

MR. REDDING. Q. Are you an officer of the Pacific Coast Oil Company? A. I am.

Q. What officer? A. Vice-President.

(It is admitted that the Pacific Coast Oil Company is a corporation organized under the laws of the State of California.)

MR. REDDING. Q. In reference to the contracts of purchase standing in your name, and just introduced, are

they still in existence, and have you complied with their terms up to the present time?

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company.)

A. Yes sir.

Q. In all particulars?

(Same objection.)

A. Yes sir.

MR. REDDING. Defendants offer in evidence declaration of trust from George Loomis to the Pacific Coast Oil Company with reference to certain lands in suit here, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 103."

(Same objection.)

MR. REDDING. Q. Do you know George Loomis' signature when you see it?

(Same objection.)

A. Yes sir, I witnessed that document myself.

Q. Is that his signature? (Exhibit 103 shown witness.)

(Same objection.)

A. Yes sir.

Q. Did you witness his execution of that document?

(Same objection.)

A. Yes sir.

MR. REDDING. We ask that the same method of substitution may be allowed in regard to a copy of this instead of the original.

MR. CALL. There is no objection to that being done, subject to the objection that it is incompetent, immaterial, and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress.

Declaration of trust, George Loomis to Pacific Coast Oil Company, dated December 8th, 1891, is marked "Defendants' Exhibit before the Special Examiner, No. 103, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence contract dated April 25th, 1889, for a deed, between the Southern Pacific Railroad Company and George Loomis, No. 10,077, for the following described land: northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of section 15, township 3 north, range 16 west, San Bernardino base and meridian, containing 560 00-100 acres, for the sum of $2800; and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 104."

(Objected to by Mr. Call as incompetent, immaterial, and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company.)

(Contract for a deed, No. 10,077, Southern Pacific Railroad Company to George Loomis, dated April 25th, 1889, is marked "Defendants' Exhibit before the Special Examiner, No. 104," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, Deed No. 9,416, from the Southern Pacific Railroad Company, D. O. Mills and G. L. Lansing, Trustees, to the Pacific Coast Oil Company, dated March 5th, 1888, for the land therein described, namely: the northeast quarter, northeast quarter of northwest quarter, and lots 1, 2, 3, and 4, of section 19, township 3 north, range 15 west, San Bernardino base and meridian, containing 313 32-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 105."

(Same objection.)

(Quitclaim deed No. 9416, Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, Trustees, to Pacific Coast Oil Company, dated March 5th, 1888, is marked "Defendants' Exhibit before the Special Examiner No. 105, Stephen Potter, Special Examiner;" and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,320, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: the south half of northeast quarter, and fractional south half of northwest quarter of section 7, township 3 north, range 15 west, San Bernardino base and meridian, containing 156 17-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner No. 106."

(Same objection.)

(Contract for a deed, No. 10,320, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner No. 106, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,321, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, for the following described land: the southeast quarter of section 7, township 3 north, range 15 west, San Bernardino base and meridian, containing 160 acres, and ask that the same be marked "Defendants' Exhibit before the Special Examiner No. 107."

(Same objection.)

(Contract for a deed No. 10,321, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 107, Stephen Potter, Special Examiner," and a certified copy there of is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,322, between the Southern Pacific Railroad Company and Gorge Loomis, dated May 8th, 1890, for the following described lands: the fractional southwest quarter of section 7, township 3 north, range 15 west, San Bernardino base and meridian, containing 153 48-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 108."

(Same objection.)

(Contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 108, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,323, between the Southern Pacific Railroad Company and George Loomis, dated May

8th, 1890, for the following described lands: the northeast quarter of section 7, township 3 north, range 16 west, San Bernardino base and meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 109."

(Same objection.)

(Contract for a deed, No. 10,323, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 109, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,324, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described lands: the northwest quarter of section 7, township 3 north, range 16 west, San Bernardino base and meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 110."

(Contract for a deed Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, No. 10,324, is marked "Defendants' Exhibit before the Special Examiner, No. 110, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10325, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described lands: southeast quarter of section 7, township 3 north, range 16 west, San Bernardino base and meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 111."

(Same objection.)

(Contract for a deed, No. 10,325, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 111, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,326, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: the southwest quarter of section 7, township 3 north, range 16 west, San Bernardino base and meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 112."

(Same objection.)

(Contract for a deed, No. 10,326, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 112, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,327, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described lands: the west half of southwest quarter, section 9, township 3 north, range 16 west San Bernardino base and meridian, containing 80 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 113."

(Same objection.)

(Contract for a deed, No. 10,327, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is

marked "Defendants' Exhibit before the Special Examiner, No. 113, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,328, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: lots 1, 2, 3, and 4, of section 17, township 3 north, range 16 west, San Bernardino base and meridian, containing 113 51-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 114."

(Same objection.)

(Contract for a deed, No. 10,328, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 114, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, for the following described land: the northeast quarter of northeast quarter of section 21, township 3 north, range 16 west, San Bernardino base and meridian, containing 40 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 115."

(Same objection.)

(Contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, No. 10,329, is marked "Defendants' Exhibit before the Special Examiner, No. 115, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,330, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: fractional northeast quarter of section 1, township 3 north, range 17 west, San Bernardino base and meridian, containing 152 5-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 116."

(Same objection.)

(Contract for a deed, No. 10,330, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 116, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,331, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: fractional northwest quarter, section 1, township 3 north, range 17 west, San Bernardino base and meridian, containing 144 65-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 117."

(Same objection.)

(Contract for a deed, No. 10,331, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890 is marked "Defendants' Exhibit before the Special Examiner, No. 117, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,332, between the Southern Pacific Railroad Company and George Loomis, dated May

8th, 1890, for the following described land: the southeast quarter of section 1, township 3 north, range 17 west, San Bernardino base and meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 118."

(Same objection.)

(Contract for a deed, No. 10,332 Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 118, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. Defendants next offer in evidence, contract for a deed, No. 10,333, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: the southwest quarter of section 1, township 3 north. range 17 west, San Bernardino base and meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 119."

(Same objection.)

(Contract for a deed, No. 10,333, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 119, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

MR. REDDING. I offer these with the understanding that copies certified by the Special Examiner may be substituted in lieu of the originals.

MR. CALL. There is no objection to the Special Examiner making copies to stand in lieu of the originals, subject to the objections named.

MR. REDDING. Q. Do you know whether or not the Pacific Coast Oil Company paid the moneys named in said contracts and deeds as having been received by the Southern Pacific Railroad Company?

(Same objection.)

A. I do.

Q. In good faith?

(Same objection.)

A. Yes sir.

Q. In gold coin of the United States?

(Same objection.)

A. Paid by checks on Wells, Fargo & Company's Bank.

Q. Do you know whether the money on those checks was received by the Railroad Company?

(Same objection.)

A. Yes sir.

Q. Did the Pacific Coast Oil Company enter into possession of the land and premises in pursuance to said deeds and said contracts?

(Same objection.)

A. It did.

Q. Has this Company paid all the state, county, and municipal taxes levied and assessed upon said lands since the date of the purchases therein named?

(Same objection.)

A. They have.

Q. And all other assessments of every nature?

(Same objection.)

A. Yes sir.

Q. Do you know, as an officer of the company and Vice-President thereof, whether or not the Southern Pacific

Railroad Company represented to the Pacific Coast Oil Company, and to George Loomis, the Trustee, that it was the owner of these lands at the time the contracts and deeds were entered into and executed?

(Same objection.)

A. They did.

Q. Did the Pacific Coast Oil Company rely on such representations?

(Same objection.)

A. It did.

Q. Are you one of the Directors of this organization?

(Same objection.)

A. I am.

Q. And also Vice-President, as I understood you to say?

(Same objection.)

A. Yes sir.

Q. Did the Pacific Coast Oil Company have notice of any contest of claim of the government of the United States and the Southern Pacific Railroad Company with reference to the title of this land at the time of these purchases?

(Same objection.)

A. I think at the time of the later ones that they knew of this Colton Marble and Lime Company case, that is my impression.

Q. How about the purchases in 1888, and the deed in 1885?

(Same objection.)

A. They had no notice at that time.

Q. Do you know whether the Pacific Coast Oil Company and George Loomis, as Trustee, are purchasers of these lands in good faith?

(Same objection.)

A. Yes sir, they are.

Q. For value received?

(Same objection.)

A. Yes sir.

Q. Without notice?

(Same objection.)

A. Yes sir.

Q. What improvements, if any, have been made by the Pacific Coast Oil Company upon these lands since the date of these contracts of purchase and deeds?

(Same objection.)

A. Buildings, tankage, derricks, pipe-lines water and oil tanks, machine shop, boiler shop, various improvements incidental to our business.

Q. What is the amount of money that has been expended in round numbers?

(Same objection.)

A. About $150,000 or $160,000.

Q. Have these improvements inured permanently to the soil?

(Same objection.)

A. Yes sir.

Q. And become a part of the realty.

(Same objection.)

A. Yes sir.

Q. Do you know whether the Pacific Coast Oil Company has kept all of the obligations on its part and George Loomis' part to be kept as set forth and contained in these contracts of purchase?

(Same objection.)

A. Yes sir.

Q. Up to date?

(Same objection.)

A. Yes sir.

Cross-Examination.

MR. CALL. Q. How long have you been Vice-President of the Pacific Coast Oil Company?

(Question objected to by Mr. Redding as incompetent, immaterial, and irrelevant, and proper cross examination.)

A. Since 1884. I think July, 1884.

Q. Are you a director?

(Same objection.)

A. Yes sir; I have been a director since its incorporation in 1879.

Q. Who are the other directors?

(Same objection.)

A. Charles N. Felton, Charles N. Felton, Jr., George Loomis, Lloyd Tevis, and myself.

Q. Did you investigate the source of title of the Southern Pacific Railroad Company when the Pacific Coast Oil Company made these contracts?

(Same objection.)

A. We talked it over and discussed the matter with our attorney at the time.

Q. Did you, yourself, make any investigation?

(Same objection.)

A. I was the medium by which the interviews were had. with our attorney in the matter.

Q. Did you personally examine any of the public records?

(Same objection.)

A. No sir.

Q. Did you examine the records of the United States Land Office?

(Same objection.)

A. I did not examine any records personally.

Q. Did you examine the terms and conditions of the Act of 1871?

(Same objection.)

A. Not personally.

Q. Do you know whether your attorney did or not?

(Same objection.)

A. I think he did, because he seemed to be very familiar with the question, and I know he told me at the time that the weight of all the decisions was that the grant was a grant *in præsenti*, and that whether they had a patent or not was not material.

Q. Do you know whether he examined the terms or not?

(Same objection.)

A. I never asked him the question, but he seemed very familiar with the subject.

Q. Did he make any reference to you in regard to the provisions of the Act of March 3d, 1871, and the Act of 1866, providing that lands granted to another company, or previously granted, were excepted out of the grant?

(Same objection.)

A. I do not think he went into a discussion of that kind.

Q. Did he refer to the condition that the lands reserved were not granted to the Southern Pacific Railroad?

(Same objection.)

A. No sir.

Q. Who paid the money to the Southern Pacific Railroad Company upon these contracts?

(Same objection.)

A. It was paid by the Pacific Coast Oil Company by a check signed by its President and Secretary.

Q. You did not pay it personally?

(Same objection.)

A. No sir; but I took the checks and contracts as a medium of transfer.

Q. They passed through your hands?

(Same objection.)

A. Yes sir.

Q. Did you see the payments made?

(Same objection.)

A. I delivered the checks in person to Jerome Madden.

Q. Do you know what knowledge Mr. Felton had of the public records in reference to the grant to the Southern Pacific Railroad and the condition of these lands?

(Same objection.)

A. None of the Directors, except Mr. Loomis and myself, took any personal part in the matter whatever; it was simply a meeting of the Board authorizing the President to make those purchases.

Q. Do you know, of your own knowledge, anything about what the other directors knew in reference to the public records and Acts of Congress?

(Same objection.)

A. I do not; Mr. Felton has been absent from here for the greater part of the time for the last four years, and Mr. Felton, Jr., has taken no particular part in the business; none of them take any part in running the business.

Q. When did you first learn that the government claimed lands in the overlapping limits of the grants to the Atlantic & Pacific Railroad Company and the Southern Pacific Railroad Company?

(Same objection.)

A. As I told you a little while ago, the first I ever knew of it personally was when the Colton Marble and Lime Company suit was called to my attention, I suppose, which was in 1888, or 1889. Somewhere along there.

Q. What year was that in?

(Same objection.)

A. I could not tell the exact year; that matter was called to my attention from the fact I had a squatter come down there who disputed my title, and run a ditch over my land, and kept me out of possession nearly two years; that was after I had bought lands on 25, 19, and 31.

Q. Can't you place the date as to when that was?

(Same objection.)

A. I could not exactly say.

Q. How many acres are claimed by the Pacific Coast Oil Company?

(Same objection.)

A. I could not tell without counting up the contracts. There are a good many matters I do not pretend to carry in my mind; the documents will show for themselves.

Q. Are there any controversies between the Pacific Coast Oil Company and parties claiming land as mineral as to any of these lands?

(Same objection.)

A. No sir; we hold all the mineral titles ourselves.

Q. You have located them yourselves?

(Same objection.)

A. We hold them, we bought out all the original locators in that country.

Q. You hold the government title, then, as well as the railroad title, subject to the compliance with the mineral laws?

(Same objection.)

A. We hold the government title to some of them, not all of them; we have no one claiming adversely to us any titles on any of these lands with the exception of one piece of 160 acres, and that is not mineral land.

Q. Did you yourself, with others of your company, make mineral locations on this land?

(Same objection.)

A. Do you mean under these contracts?

Q. Have you at this present moment?

(Same objection.)

A. Some of it; yes sir, years ago.

Q. Have not you located some of it recently?

(Same objection.)

A. No sir, none whatever since the dates of these contracts.

Q. You located it before that?

(Same objection.)

A. Some of it; some of it is not in any way located.

Q. You say there are no contests pending in the Interior Department in reference to the mineral character of this land?

(Same objection.)

A. No sir.

Q. Has not the Government of the United States re-

served these lands, or a considerable portion of them, as mineral?

(Same objection.)

A. There are no mineral reservations on any of these lands at present, as I am informed; on the contrary, I know as a matter of fact, that a portion of them that were located as mineral lands when the parties applied for them as mineral they were rejected on the ground that the mineral character was not proven.

Q. How long have you been acquainted with the land?

(Same objection.)

A. Since July, 1875.

Q. Is the land in the indemnity limits or primary limits of the grant to the Southern Pacific?

(Same objection.)

A. These lands are within the primary limits, most of them.

Q. Are some of them in the indemnity limits?

(Same objection.)

A. I think a little of it is in the indemnity limits; yes sir.

Q. Did you locate some of it as mineral land in 1875?

(Same objection.)

A. No; we made no locations in 1875, but we bought out a great many old locators.

Q. Who had located as mineral?

(Same objection.)

A. It was on some of those particular locations which I spoke of a little while ago, where they were rejected as the mineral character was not proven, on the ground that a mere seepage of oil and asphaltum did not constitute

mineral lands, and applications for patents for about 1800 or 1900 acres were rejected at that time.

Re-Direct Examination.

MR. REDDING. Q. You stated that you had some notice of litigation concerning these questions in 1888 or 1889; do you mean that you got notice in reference to these particular lands at that time?

(Same objection.)

A. No sir; not these lands at all; to the lands in San Bernardino County and in the neighborhood of Colton that were involved in the Colton Marble and Lime Company suit.

Q. Had you any notice at the time the directors authorized the purchase, or at the time the Pacific Coast Oil Company and George Loomis contracted to purchase and purchased these lands, did you, he, they, or it, have any notice whatever of any contest, with reference to these lands, being in existence between the Govrnment and the Southern Pacific Railroad Company?

(Same objection.)

A. No sir, not as to these lands; these lands were purchased under the advice of our attorney that the railroad were the owners.

Q. Were they also purchased on the representations of the Southern Pacific Railroad Company that they were the owners?

(Same objection.)

A. Yes sir.

TESTIMONY OF D. G. SCHOFIELD.

Recalled for further cross examination.

(This portion of the testimony of this witness was taken on October 9th, but is inserted at this point in the record for convenience in signing.)

Cross-Examination. (Resumed.)

MR. CALL. It is understood, Mr. Redding, I believe, that the photograph marked "Defendants' Exhibit before the Special Examiner, No. 102," is to be withdrawn?

MR. REDDING. Q. Mr. Scofield, I understand that refers to land not involved in the suit?

A. It is not involved in the suit; that is, I am so informed this morning, and I presume it is so. That is situated in Township 1 north, range 6 west, San Bernardino base and meridian.

MR. REDDING. Very well, Mr. Call, it is satisfactory to withdraw that photograph, Exhibit No. 102.

(It is agreed between counsel that "Defendants' Exhibit before the Special Examiner, Nos. 98, 99, 100, 101, and 102," having been withdrawn, by consent, from the record, that the testimony in regard to said exhibits and the lands described therein, may be eliminated from the record by the Special Examiner drawing a line through the same, it being understood that this agreement extends to the elimination of the original direct examination and cross examination of the witness.)

(In accordance with the foregoing agreement between counsel for complainants and defendants, I have eliminated from this record the direct examination and cross examina-

tion, as originally appearing herein, of the witness, D. G. Schofield, by drawing a line through each page thereof, and signing my initials in the margin of such pages.

STEPHEN POTTER,
Special Examiner.)

(I have also, in accordance with the agreement between counsel for complainants and defendants, withdrawn "Defendants' Exhibit before the Special Examiner, No. 102," from this record, and returned the same to the witness.

STEPHEN POTTER,
Special Examiner.)

MR. CALL. Q. In whose names were the contracts from the Southern Pacific Railroad Company, taken involving lands in this suit?

A. In the name of George Loomis, Trustee for the Pacific Coast Oil Company.

Q. Has George Loomis any connection with the Pacific Coast Oil Company? A. Yes sir.

Q. What connection? A. He is the President.

Q. Was he at the time the contracts were taken?

A. Yes sir.

Q. Was he at that time also a director?

A. Yes sir.

Q. How many oil wells have you on these lands?

A. It would be a little hard to answer that question without referring to our maps, from the fact that we also have oil wells on the even sections, which are, of course, in no way involved.

Q. Approximately, what would you say?

A. I should say fifteen or twenty, approximately.

Q. Can you state how much oil you have taken out of those wells?

A. I could not, without referring to our records.

Q. What is the price of oil?

A. That also would necessitate looking up, from the fact that we do not sell any oil in a crude state.

Q. How much do you receive from the oil?

(Question objected to by Mr. Redding as incompetent, inmaterial and irrelevant, and having nothing to do with this case.)

A. I prefer not to answer that, as going into private matters, unless it is necessary that I should do so. Of course, there are others in the same business, and it would be giving our busines away.

Q. What is the market value of oil?

(Same objection.)

A. There are six or eight different products come out of this oil, and the prices are different, the values are different, and it fluctuates from time to time.

Q. What is the market value of crude petroleum?

(Same objection.)

A. Ours has none, because we do not sell any in a crude state.

Q. What is the market value of crude petroleum in this market?

(Question objected to by Mr. Redding as incompetent, imaterial and irrelevant, and calling for the opinion of the witness.)

A. I have no objection to state that there is none sold in the San Francisco market. In Los Angeles the price varies

from $1.75 to $2.00 per barrel. The quality of the crude oil varies greatly with different localities.

Q. What do you pay for transporting oil from your oil wells to Los Angeles?

(Same objection.)

A. We do not transport any; we do not market any.

Q. Where do you transport it to?

(Same objection.)

A. It all goes to Alameda Point, opposite to San Francisco.

Q. What do you pay for transporting it there?

(Same objection.)

A. I think that is going into our private business.

Q. Do you refuse to answer the question?

(Same objection.)

A. Yes, sir.

MR. CALL. I move to exclude all of the testimony of the witness heretofore given, on the ground that he refuses to answer the question.

MR. REDDING. I advise the witness to refuse to answer the question.

THE WITNESS. I simply do not wish to answer questions that I do not see are at all material to this inquiry, as disclosing the nature of our business, which others, who are in the same line, could take advantage of. Of course, oils are taken from other lands that are in no way involved in this action. The larger portion of the oil is taken from lands involved in this action.

MR. CALL. What is the value of crude petroleum at the wells?

(Same objection.)

A. We do not sell any crude petroleum from our wells, and put no valuation on it there.

Q. What is the value of it there?

(Same objection.)

A. I do not know how you would fix a value there when we do not market any of it in that state.

Q. Do you know what the value of it is there?

(Same objection.)

A. I, of course, could fix a valuation on it from time to time, from month to month, by going through all the various figures—of cost of transportation, cost of refining, cost of marketing—and splitting up the different products under their various heads, and see what they net, and deduct expenses.

Q. Approximately, what is it worth at the wells?

(Same objection.)

A. I prefer not to answer the question, as being in the nature of disclosing our private business.

Q. You refuse to answer the question, then?

(Same objection.)

A. I do, upon the same ground as before.

MR. REDDING. I instruct the witness not to answer the question.

MR. CALL. I move to exclude all the testimony of this witness, on the ground that he refuses to answer this question.

Q. How deep are the wells which you dug on these lands?

(Same objection.)

A. Our wells vary all the way in depth from 1200 or 1300 feet to 2350 feet.

Q. I ask you to examine your records and to state to the Special Examiner how many wells you have on this land, and the depth of each?

(Same objection.)

MR. REDDING. Q. Can you not speak generally?

A. No, I could not, without looking at the maps, because the wells have been drilled without any reference to this matter, and the greater part of them are on even sections and patented lands, as mineral patents.

MR. CALL. Q. How much money do you say you have expended on these lands in improving them?

A. In the neighborhood of $150,000 or $160,000.

Q. What did you spend that money in?

A. Buildings, tankage, pipe lines, machine shop, boiler shops, and various improvements incidental to our business, oil tanks, etc.

Q. Were not those improvements—water tanks, pipe lines, machine shops—also used for the oil production on other lands in the even sections?

A. Yes, sir; part of the whole system.

Q. How many acres of land do you hold in even sections?

A. I should have to refer to our records to answer that question.

Q. About how much?

A. Well, I would not care to state, because I could give it exactly by reference to the maps.

Q. I will ask you to examine your maps, and books, and records, and state to the Special Examiner how many acres of oil lands you hold which are on even numbered sections?

MR. REDDING. I will suggest that the witness say

there are a blank number of acres for his answer now, and the amount can be filled in when ascertained.

A. There are 1180 acres of oil lands held by us on even numbered sections.

MR. REDDING. Q. You have stated that on railroad lands involved in this suit you have expended in the neighborhood of $150,000? A. Yes, sir.

MR. CALL. Q. You say you have expended $150,000 on lands involved in this suit? A. Yes, sir.

Q. That they also are used—

A. (Interrupting.) Well, it is a part of the whole general system.

Q. And for the transportation and refinement of oil?

A. Transportation and handling. We do not refine there.

Q. The transportation and handling on other lands as well as here? A. Yes, sir.

Q. How much have you spent in buildings?

A. All those questions would be very hard to tell without going into—

Q. (Interrupting.) Where are your buildings situated?

A. We have them scattered all along. We have fifteen or twenty, I should judge, on one piece, where a great many of our employees reside. I think that is in section 1, township 3 north, range 17 west.

Q. How much crude petroleum have you produced on these lands involved in this suit?

(Same objection.)

A. I decline to answer that on the ground that it is giving away our private business.

MR. REDDING. I instruct the witness not to answer.

MR. CALL. I move to exclude all the testimony of this witness, on the ground that he refuses to answer this question.

Q. Have you produced a considerable quantity?

(Same objection.)

A. Yes, sir.

Q. What is the average capacity of those wells per day?

(Same objection.)

A. I decline to answer, on the same ground as heretofore stated.

MR. REDDING. You are instructed not to answer.

MR. CALL. I move to exclude all the testimony of the witness on the ground that he refuses to answer this question.

Q. Then, I understand, Mr. Schofield, that you refuse to state how much money you have received from oil produced on the lands involved in this case?

MR. REDDING. I instruct the witness not to answer the question.

A. I decline to answer it on the grounds heretofore given.

MR. CALL. I move to exclude all the testimony of this witness upon the ground that he refuses to answer the question.

Q. Do you know when the contracts from the defendant railroad company were made to George Loomis for these lands? A. Yes, sir.

Q. Were you present when they were made?

A. I was the medium of transfer between the Southern Pacific Railroad Company and George Loomis.

Q. Were they each of them actually made on the dates which they bear? A. I assume; yes.

Q. Do you know whether they were or not?

A. I could tell by referring to our check books. The checks were given, for I took the checks myself to Mr. Jerome Madden, and took the contracts.

MR. REDDING. Q. Do you mean the checks in payment for the amounts due? A. Yes, sir.

MR. CALL. Q. Then can you or can you not now state whether those contracts were actually made on the dates on which they purport to be made?

A. Approximately within a very few days.

Q. What do you mean by a few days?

A. For instance, a contract might have been prepared as signed on the first day of July and the check might have been given on the 2d day of July, after notifying us they were ready.

Q. Might or might there not be a difference of say two weeks?

A. No, sir; because when we were notified we would go down and pay up and take the contract.

Q. I will ask you to examine such records as you have and state positively to the Special Examiner whether of your own knowledge you can say that those contracts and each of them were made on the dates which they purport to bear?

THE WITNESS. I will do so.

Re-Direct Examination.

MR. REDDING. Q. In round numbers, how much has the Pacific Coast Oil Company invested in its plant on these lands and the Government lands adjacent thereto?

A. A part of our system also includes our refining plant at Alameda Point, and our tank-car lines. We have invested approximately one and a half millions of dollars in our entire business.

Q. What is the amount of dividends that the Pacific Coast Oil Company has paid since its incorporation, in round numbers?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. It has paid in the neighborhood of $100,000 during the present year.

Q. Did it pay any dividends prior thereto?

(Same objection.)

A. No, sir.

In answer to the question on page 650, which it was agreed that the witness might answer to the Special Examiner in the absence of counsel, the witness states:

A. I have examined our records and find that for contract No. 10,077, dated April 21st, 1889, that we made payment to the Southern Pacific Railroad Company, by our check on Wells, Fargo & Co.'s Bank, San Francisco, of the same date. I further find that for contracts Nos. 10,320 to 10,333, inclusive, all of which contracts are dated May 8th, 1890, that we made payment to the Southern Pacific Railroad Company on said contracts by our check on Wells, Fargo & Company's Bank, San Francisco, dated May 7th, 1890, and that for deed No. 9416, "Defendants' Exhibit before the Special Examiner, No. 105," that we made payment to the Southern Pacific Railroad Company by our check on Wells, Fargo & Company's Bank, San Francisco, dated March 2d, 1888. I further found, upon examination,

that the money called for by all of these checks had been duly collected by the Southern Pacific Railroad Company and the cancelled checks returned to us by Wells, Fargo & Company's Bank. This shows that the contracts were executed within from one to three days of the time of their date, and that we actually paid the money in advance of their execution.

I am a citizen of the United States.

D. G. SCHOFIELD.

Defendants' Exhibit before the Special Examiner No. 103.

Whereas, I, George Loomis, of the County of San Mateo, State of California, have heretofore entered into certain contracts with the Southern Pacific Railroad Company of California, a corporation organized and existing under and by virtue of the laws of the State of California, for the purchase of the following described lands:

All of section 15, T. 3 N., R. 16 W., S. B. M. with the exception of the N. E. ¼ of the N. W. ¼ and the N. W. ¼ of the N. E. ¼;

The S. ½ of the N. E. ¼ and fraction S. ½ of the N. W. ¼ of section 7, T. 3 N., R. 15 W., S. B. M.;

The S. E. ¼ of section 7, T. 3 N., R. 15 W., S. B. M.;

The fractional S. W. ¼ of section 7, T. 3 N., R. 15 W., S. B. M.;

That certain tract which has never been surveyed by the United States Government surveyors, but is herein des-

cribed and numbered as if the same had been surveyed and the survey approved and filed according to law; to wit: the N. E. ¼ of section 7, T. 3 N., R. 16 W., S. B. M.;

That certain tract which has never been surveyed by the United States Government surveyors but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law; to wit; the N. W. ¼ of section 7, T. 3 N., R. 16 W., S. B. M.;

That certain tract which has never been surveyed by the United States Government surveyors but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law; to wit; the S. E. ¼ of section 7, T. 3 N., R. 16 W., S. B. M.;

That certain tract of land which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law, to wit: The S. W. ¼ of section 7, T. 3 N., R. 16 W., S. B. M.

The W. ½ of the S. W. ¼ of section 9, T. 3 N., R. 16 W., S. B. M.;

Lots 1, 2, 3, and 4 of section 17, T. 3 N, R. 16 W., S. B. M.;

The N. E. ¼ of the N. E. ¼, of section 21, T. 3 N., R. 16 W., S. B. M.;

The fractional N. E. ¼ of section 1, T. 3 N., R. 17 W., S. B. M.;

The fractional N. W. ¼ of section 1, T. 3 N., R. 17 W., S. B. M.;

The S. E. ¼ of section 1, T. 3 N., R. 17 W., S. B. M.;

The S. W. ¼ of section 1, T. 3 N., R. 17 W., S. B. M.

I do hereby declare that the purchase of all of the said lands has been made by me for the sole use and benefit of the Pacific Coast Oil Company, a corporation organized and existing under and by virtue of the laws of the State of California and that the said contracts of purchase are held by me in trust for said corporation and that I will at any time and upon its demand transfer to it all my right, title, and interest in and to said contracts upon the said Pacific Coast Oil Company's assuming all the conditions and obligations therein imposed upon me as the purchaser from said Southern Pacific Railroad Company.

Dated San Francisco ,Dec. 8th, 1891. In the presence of D. G. Scofield.

GEORGE LOOMIS.

[Endorsed]: Declaration of Trust, George Loomis to Pacific Coast Oil Co., December 8th, 1891.

(Marked Defendants' Exhibit before the Special Examiner, No. 103, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument, with the original, and find it to be a full, true, and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed:] Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 104.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10,077.

This Agreement, made at San Francisco, California, this twenty-fifth (25th) day of April, A. D. 1889, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part, the following tracts of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the northeast quarter of northeast quarter (N. E. ¼ of N. E. ¼), south half of northeast quarter (S. ½ of N. E. ¼), northwest quarter of northwest quarter (N. W. ¼ of N. W. ¼), south half of northwest quarter (S. ½ of N. W. ¼), and south half (S. ½) of section fifteen (15), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing five hundred and sixty (560.00) 00-100 acres, for the sum of twenty-eight hundred ($2800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the permises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of twenty-eight hundred ($2800.00) 00-100 dollars, as follows, to wit: Five hundred and sixty ($560.00) 00-100 dollars, and also $156.80, one year's interest in advance, on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which

two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of twenty-two hundred and forty ($2240.00) 00-100 dollars, with interest thereon, annually, in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the twenty-fifth (25th) day of April, 1894; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of

the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances

beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain

or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS, [Seal.]

Schedule of prices at which the lands described in this contract have been sold this twenty-fifth (25th) day of April, 1889.

Fraction.	Sec.	Tp.	Range.	B & M.	No. of Acres.	Rate per Acre.	Amount.
NE ¼ of NE ¼ S ½ of EN ¼ NW ¼ of NW ¼ S ½ of NW ¼ and S ½	15	3 N	16 W	S B	560.00	$5.00	$2800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,077. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated April 25th, 1889. Interest, $156.80,

due on the 25th day of April of each year. Remainder of principal, $2,240.00, due on the 25th day of April, 1894. (Marked) Defendants' Exhibit before the Special Examiner, No. 104, Stephen Potter, Special Examiner.

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true, and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, Oct. 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 105.

G. 291—2-29-88-2,000.

QUIT CLAIM DEED NO. 9416.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees of all the lands of the said Southern Pacific Railroad Company lying in the State of California which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, On the First day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thou-

sand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company, in seven series, to be designated by the letters of the alphabet, commencing with the letter A and followed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds, each for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates, respectively, as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might from time to time be agreed upon between the said railroad company

and the said trustees; and that when such sales had been made and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company.

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did design his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said deed of trust;

And whereas, said deed of trust further provided that for the sake of convenience in making said conveyance the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said land, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and ef-

fect as if made by them in person.

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco and State of California, their true and lawful attorney, in their names, place and stead to make, execute and deliver all conveyance required of them as aforesaid;

And whereas, the said railroad company has sold the lands hereinafter described pursuant to the foregoing conditions to Pacific Coast Oil Co., of the City and County of San Francisco and State of California, for the sum of seven hundred and eighty-four ($784.55-100) 55-100 dollars, which sum has been by it fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid.

Now, therefore, in consideration of the premises and the said sum of seven hundred and eighty-four ($784.55-100) 55-100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do remise, release and quit claim to the E. B. R. N. P. successors or said Pacific Coast Oil Co. and to its heirs and assigns, all the right, title and interest which they now have or may hereafter acquire from the Government of the United States of in and to the following described tracts of land situate, lying and being in the County of Los Angeles and State of California, to wit: The northeast quarter (N. E. ¼), northeast quarter of northwest quarter (N. E. ¼ of N.

W. ¼), and lots one, two, three, and four (1, 2, 3, and 4) of section number nineteen (19), in township three (3) north of range fifteen (15) west, San Bernardino base and meridian, containing three hundred and thirteen (313 82-100) 82-100 acres, acording to the United States surveys, together with all the privileges and apurtenances thereunto appertaining and belonging; excepting and reserving, however, for railroad purposes a strip of land one hundred feet wide lying equally on each side of the track of the railroad of said company, or any branch railroad now or hereafter constructed on said lines, and the right to use all water needed for the operating and repairing of said railroad; and subject also to the reservation and condition that said purchaser, heirs and assigns shall erect and maintain good and sufficient fences on both sides of said strip or strips of land; and also reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises to the said E. B. R. N. P. its succesors or Pacific Coast Oil Co., heirs and assigns, to its and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal, and the said D. O.M ills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals this fifth (5th) day of March, A. D. 1888.

CHARLES CROCKER,

Pres. S. P. R. R. Co.

103.

[Seal.] J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, [SEAL.]

GERRET L. LANSING [SEAL.]

Trustees.

By JEROME MADDEN,
Their Joint Attorney in Fact.

State of California,
City and County of San Francisco—ss.

On this fifth (5th) day of March, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared Charles Crocker, known to me to be the President, and J. L. Wilcutt, known to me to be the Secretary of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Seal.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed] 324 Pine, S. F. Quit Claim Deed, No. 9416. Southern Pacific Railroad Co. D. O. Mills and Gerrit L. Lansing, trustees, to Pacific Coast Oil Co., quit claim deed dated March 5th, 1888. Recorded at request of Pillsbury and Blanding, Apr. 19, 1888, 49 min. past 3 P. M., in book 418, *page 282, of deeds, Los Angeles County records.* Frank Gibson, County Recorder. By Arthur Bray, Deputy. Fees, $2.50. Folios 14. (Marked Defendants' Exhibit before the Special Examiner, No. 105. Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, Oct. 4th, 1893. [Endorsed]: Filed Dec, 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 106.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10,320.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part, hereinafter contained, agrees to sell to the party of the second part the following tracts of land, situ-

ated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the south half of northeast quarter (S. ½ of N. E. ¼) and fractional south half of northwest quarter (fracl. S. ½ of N. W. ¼) of section seven (7), township *three (3) north, range fifteen (15) west, San Bernardino* base and meridian, containing one hundred and fifty-six (156.17) 17-100 acres, for the sum of seven hundred and eighty ($780.85) 85-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the permises, agrees to buy the land hereinbefore described and to pay the party of the first part the said sum of seven hundred and eighty ($780.85) 85-100 dollars, as follows, to wit: One hundred and fifty-six ($156.17) 17-100 dollars, and also $43.73, one year's interest, in advance on the remainder, in United State gold coin, of the present standard value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and twenty-four ($624.68) 68-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes, or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so

paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the part of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said

land, without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take, and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of remainder or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said

lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be resposible to him for damages or cost in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possesion of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed, that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Sec-

retary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEO. LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
S ½ of NE ¼ Fracl. S ½ of NW ¼	17	3 N	15 W	S B	156.17	$5.00	$780.85

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,320. Contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest $43.73 due on the 8th day of May of each year. Remainder of principal $624.68 due on the 8th day of May, 1895. (Marked) Defendant's Exhibit gefore the Special Examiner, No. 106, Stephen Potter, Special Examiner.

I hereby certify that I have compared the foregoing instrument with the original and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, Oct. 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 107.
G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department. No. 10,321.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the southeast quarter (S. E. ¼) of section seven (7), township three (3) north, range fifteen (15) west, San Bernardino base and meridian, containing one hundred and sixty (160) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: One hundred and sixty ($160.00) 00-100 dollars, and also $44.80, one years' interest in advance, on the remainder, in Unitd States gold coin of the present standard of value, on the execution of this contract (which two las mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually, in advance, at the rate of seven per cent. per annum, both in

United States gold coin of the present standard of vaule, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of

the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be pro-

cured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written con-

sent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS, [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

Fraction.	Sec.	Tp.	Range.	B & M.	No. of Acres.	Rate per Acre.	Amount.
SE ¼	7	3 N	15 W	S B	160.00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,321.—Contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $44.80, due on the 8th day of May of each year. Remainder of principal, $640.00, due on the 8th day of May, 1895. (Marked) Defendants' Exhibit before the Special Examiner, No. 107. Stephen Potter, Special Examiner.

I hereby certify that I have compared the foregoing instrument with the original and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, Oct. 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner No. 108.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10,322.

This agreement, made at San Francisco, California, this eigtht (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tracts of land, situated in the County of Los Angeles, Sate of California, and known and designated on the public surveys of the United States as the fractional southwest quarter (fracl. S. W. ¼) of section seven (7), township three (3) north, range fifteen (15) west, San Bernardino base and meridian, containing one hundred and fifty-three (153.48) 48-100 acres, for the sum of seven hundred and sixty-seven ($767.40) 40-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of seven hundred and sixty-seven ($767.40) 40-100 dollars, as follows, to wit: One hundred and fifty-three ($153.48) 48-100 dollars, and also $42.97, one year's interest in advance, on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder to wit: the sum of six hundred

and thirteen ($613.92) 92-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the

right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant,

therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS, [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

Fraction.	Sec.	Tp.	Range.	B & M	No. of Acres.	Rate per Acre.	Amount.
Fracl. SW ¼	7	3 N	15 W	S B	153.48	$5.00	$767.40

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,322. Contract for a Deed.—Southern Pacific Railroad Company to Gorge Loomis, dated May 8th, 1890. Interest, $42.97, due on the 8th day of May of each year. Remainder of principal, $613.92, due on the 8th day of May, 1895. (Marked Defendants' Exhibit before the Special Examiner, No 108. Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original and find it to be a full, true and

correct copy thereof. Stephen Potter, Special Examiner. San Francisco, Oct. 4th, 1893. [Endorsed]: Filed Dec 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner No. 109.
G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.
No. 10,323.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed and the survey approved and filed acording to law, to wit: The northeast quarter (N. E. ¼) of section seven (7), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the

premises, agrees to buy the land hereinbefore described and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: One hundred and sixty ($160.00) 00-100 dollars, and also $14.80, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder, and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United

States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the part of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land ,without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possesison of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or cost in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those contracts for which it shall be finally

determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed, that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its secretary, and land agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEO. LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

Fraction.	Sec.	Tp.	Range.	B & M	No. of Acres.	Rate per Acre.	Amount.
NE ¼	7	3 N	16 W	S B	160.00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,323. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $44.80, due on the 8th day of May of each year. Remainder of principal, $640.00, due on the 8th day of May, 1895. (Marked, "Defendants' Exhibit before the Special Examiner, No. 109. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 110.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10,324.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of iand, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as which has never been surveyed by the

United States Government surveyors, but is herein described and numbered as if the same had been surveyed, and the survey approved and filed according to law, to wit: The northwest quarter (N. W. ¼) of section seven (7), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: One hundred and sixty ($160.00) 00-100 dollars, and also $44.80, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall

bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second

part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.

J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS, [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

Fraction.	Sec.	Tp.	Range.	B & M	No. of Acres.	Rate per Acre.	Amount.
NW ¼	7	3 N	16 W	S B	160.00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,324. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $44.80, due on the 8th day of May of each year. Remainder of principal, $640.00, due on the 8th day of May, 1895. (Marked "Defendants' Exhibit before the Special Examiner, No. 110. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 111.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.
No. 10,325.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law, to wit: The southeast quarter (S. E. ¼) of section seven (7), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: One hundred and sixty ($160.00) 00-100 dollars, and also $44.80, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied

or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder, and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the part of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that until the full payment of said

purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land ,without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possesison of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part all

moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or cost in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those contracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed, that the party of the second part

shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its secretary, and land agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEO. LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

FRACTION.	SEC.	TP.	RANGE.	B & M.	No. OF ACRES.	RATE PER ACRE.	AMOUNT.
SE ¼	7	8N	16 W	S B	160.00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,325. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $44.80, due on the 8th day of May of each year. Remainder of principal, $640.00, due on the 8th day of May, 1895. (Marked "Defendans' Exhibit before the Special Examiner, No. 111. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 112.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10,326.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law, to wit: The southwest quarter (S. W. ¼) of section seven (7), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: One hundred and sixty ($160.00) 00-100 dollars, and also $44.80, one year's interest in advance on the remainder, in United States gold coin of the present standard of value,

on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1890; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of

land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure

patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them

by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS, [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1895:

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
SW ¼	7	3 N	16 W	S B	160.00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,326. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $44.80, due on the 8th day of May of each year. Remainder of principal, $640.00, due on the 8th day of May, 1895. (Marked "De-

fendants' Exhibit before the Special Examiner, No. 112. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 113.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department. No. 10,327.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the west half of southwest quarter (W. ½ of S. W. ¼) of section nine (9), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing eighty (80.00) 00-100 acres, for the sum of four hundred ($400.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of four hundred ($400.00) 00-100 dollars, as follows, to wit: Eighty ($80.00) 00-100 dollars, and also $22.40, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of three hundred and twenty ($320.00) 00-100 dollars, with interest thereon, annually, in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part

will, after the receipt of a patent therefor from the United States upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without

notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall,

except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent, S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1895:

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
W ½ of S W ¼	9	3 N	16 W	S B	80.00	$5.00	$400.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,327. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $22.40, due on the 8th day of May of each year. Remainder of principal, $320.00, due on the 8th day of May, 1895. (Marked "Defendants' Exhibit before the Special Examiner, No. 113. Stephen Potter, Special Examiner.")

I hereby certify that I hae compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner No. 114.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department No. 10,328.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land situated in the County of Los Angeles, State of California,

known and designated on the public surveys of the United States as lots one, two, three and four (1, 2, 3, and 4) of section seventeen (17), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing one hundred and thirteen (113.51) 51-100 acres, for the sum of five hundred and sixty-seven ($567.55) 55-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of five hundred and sixty-seven ($567.55) 55-100 dollars, as follows, to wit: One hundred and thirteen ($113.51) 51-100 dollars, and also $31.78, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of four hundred and fifty-four ($454.04) 04-100 dollars, with interest thereon, annually, in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same man-

ner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part

may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or

costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.

J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS, [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890:

FRACTION.	SEC.	TP.	RANGE.	B & M	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
Lots 1, 2, 3 and 4	17	3 N	16 W	S B	113.51	$5.00	$567.55

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,328. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $31.78, due on the 8th day of May of each year. Remainder of principal, $454.04, due on the 8th day of May, 1895. (Marked "Defendants' Exhibit before the Special Examiner, No. 114. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 115.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department. No. 10,329.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern

Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the northeast quarter of northeast quarter (N. E. ¼ of N. E. ¼) of section twenty-one (21), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing forty (40.00) 00-100 acres, for the sum of two hundred ($200.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of two hundred ($200.00) 00-100 dollars, as follows, to wit: Forty ($40.00) 00-100 dollars, and also $11.20, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of one hundred and sixty ($160.00) 00-100 dollars, with interest thereon, annually, in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises,

or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said

purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all

moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part

shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent, S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890:

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
NE ¼ of NE ¼	21	3 N	16 W	S B	40.00	$5.00	$200.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,329. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $11.20, due on the 8th day of May of each year. Remainder of principal, $160.00, due on the 8th day of May, 1895. (Marked "Defendants' Exhibit before the Special Examiner, No. 115. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 116.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10,330.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as fractional northeast quarter (fracl. N. E. ¼) of section one (1), township three (3) north, range seventeen (17) west, San Bernardino base and meridian, containing one hundred and fifty-two 05-100 (152.05-100) acres, for the sum of seven hundred and sixty ($760.25) 25-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of seven hundred and sixty ($760.25) 25-100 dollars, as follows, to wit: One hundred and fifty-two ($152.05) 05-100 dollars, and also $42.57, one year's interest in advance on the remainder, in United States gold coin, of the present standard of alue, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and

eight ($608.20) 20-100 dollars, with interest thereon, annually, in advance, at the rate of seven per cent per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessements that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch

railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for

lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent, S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

Fraction.	Sec.	Tp.	Range.	B & M.	No. of Acres.	Rate per Acre.	Amount.
Fracl. NE ¼	1	3 N	17 W	S B	152.05	$5.00	$760.25

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,330. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $42.57, due on the 8th day of May of each year. Remainder of principal, $608.20, due on the 8th day of May, 1895. (Marked "Defendants' Exhibit before Special Examiner, No. 116. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing in-

strument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 117.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10,331.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the fractional northwest quarter (frac. N. W. ¼) of section one (1), township three (3) north, range seventeen (17) west, San Bernardino base and meridian, containing one hundred and forty-four (144.65) 65-100 acres, for the sum of seven hundred and twenty-three ($723.25) 25-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of seven hundred and twenty-three ($723.25) 25-100 dollars, as follows, to wit: One hundred and forty-four ($144.65) 65-100 dollars, and also $40.50, one years' interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last-mentioned sums have this day been fullp paid), and the remainder to wit: the sum of five hundred and seventy-eight ($578.60) 60-100 dollars with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin, of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will,

after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without

notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall,

except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.

J. L. WILLCUTT,
Secretary S. P. R. R. Co.

GEORGE LOOMIS, [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
Fracl. NW ¼	1	3 N	17 W	S B	144.65	$5.00	$723.25

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,321, Contract for a Deed.—Southern Pacific Railroad Company to George Loomis. Dated May 8th, 1890. Interest $40.50 due on the 8th day of May of each year. Remainder of principal, $578.60 due on the 8th day of May, 1895.

(Marked, "Defendants' Exhibit before the Special Examiner, No. 117, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument, with the original, and find it to be a full, true, and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed:] Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner No. 118.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10,332.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land situ-

ated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the southeast quarter (S. E. ¼) of section one (1), township three (3) north, range seventeen (17) west, San Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: one hundred and sixty ($160.00) 00-100 dollars, and also $11.80, one years' interest in advance on the remainder in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin, of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895, and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall

bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said

land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said

lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Sec-

retary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent, S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890:

Fraction.	Sec.	Tp.	Range.	B & M.	No. of Acres.	Rate per Acre.	Amount.
SE ¼	1	3 N	17 W	S B	160.00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,332. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest $44.80 due on the 8th day of May of each year. Remainder of principal, $640.00, due on the 8th day of May, 1895. (Marked "Defendants' Exhibit before the Special Examiner, No. 118, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument, with the original, and find it to be a full, true, and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed:] Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 119.
G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 10333.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land situated in the County of Los Angeles, State of California, known and designated on the public surveys of the United States as the southwest quarter (S. W. ¼) of section one (1), township three (3) north, range seventeen (17) west, San Bernardino base and meridian, containng one hundred and sixty (160.00) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: one hundred and sixty ($160.00) 00-100 dollars, and also $44.80, one years' interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in

United States gold coin, of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of

the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be pro-

cured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written con-

sent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS, [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890:

Fraction.	Sec.	Tp.	Range.	B & M.	No. of Acres.	Rate per Acre.	Amount.
SW ¼	1	3 N	17 W	S B	160.00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands. No. 10,333. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest $44.80 due on the 8th day of May of each year. Remainder of principal, $640.00, due on the 8th day of May, 1895. (Marked, "Defendants' Exhibit before the Special Examiner, No. 119, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument, with the original, and find it to be a full, true, and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed:] Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEPOSITION OF JACKSON A. GRAVES.

J. A. GRAVES, called for the defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. REDDING.—

Q.—1. What is your name, please?

A. J. A. Graves.

Q.—2. Where do you reside?

A. Los Angeles County. I live at Alhambra in this county.

Q.—3. Are you a resident and citizen of the Southern District California?

A. Yes sir; have been since 1875.

Q.—4. Are you a citizen of the United tSates?

A. Yes sir.

Q.—5. Where were you born?

A. In the State of Iowa.

Q.—6. United States of America? A. Yes sir.

Q.—7. Are you one of the defendants in this action?

A. Yes sir, by substitution.

Q.—8. You are one of the defendants? A. Yes sir.

Q.—9. Do you hold any deeds of purchase of lands involved in this suit from other purchasers from the Southern Pacific Railroad Company?

A. This is case 184?

Q.—10. Yes.

MR. CALL—The question is objected to as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that by the terms and conditions of the Act of Congress of March 3, 1871, and the Act of

July 27, 1866, the lands involved in this suit were excepted out of the grant to the Southern Pacific Railroad Company.

A. Yes sir. Do you want to offer these in evidence?

MR. REDDING.—Yes sir. Just introduce them.

MR. GRAVES.—I offer in evidence deed from the Southern Pacific Railroad Company to The Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, for five thousand and some acres of patented lands, patented prior to the issuance of the deed, described as follows: said deed being numbered 4719:

"The southwest quarter (S. W. $\frac{1}{4}$) of section seventeen (17). All of fractional section nineteen (19). All of section twenty-one (21). All of section twenty-seven (27), in township five (5) north of range ten (10) west; the southwest quarter (S. W. $\frac{1}{4}$) of section three (3); all of fractional section five (5); all of section nine (9); west half (W. $\frac{1}{2}$) of section eleven (11) in township five (5) north of range eleven (11) west. All of fractional section one (1) in township five (5) north of range twelve (12) west, and west half (W. $\frac{1}{2}$) of section No. thirty-three (33) in township six (6) north of range eleven (11) west, all in San Bernardino base and meridian, containing five thousand and eighteen (5,018.78) 78-100 acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; reservirg all claim of the United States to the same as mineral land."

MR. CALL.—Same objections.

Document last offered marked Defendant's Exhbiit, No. 44 before E. H. Lamme, Examiner.

MR. REDDING.—Mr. Call, in reference to the intro-

duction of these deeds and contracts, are you willing that certified copies of the same may be introduced in liue of the originals?

MR. CALL—Yes; I have no objections, upon the Examiner comparing them and certifying to their being copies; the copies may be introduced in lieu of the originals; subject to the same objections.

MR. REDDING—Then I understand you are now introducing the originals by showing them.

MR. GRAVES.—Yes sir.

MR. REDDING.—And then leaving the certified copies, to be certified, with the Examiner.

MR. GRAVES.—Yes sir.

MR. REDDING.—Proceed with the enumeration and introduction of the exhibits.

MR. GRAVES.—Also contract, No. 4,720, for the following described lands:

"All of fractional sections three (3), five (5), and sevenn (7); all of section nine (9); north half (N. ½) and southeast quarter (S. E. ¼) of section seventeen (17) in township five (5) north of range ten (10) west. All of fractional section one (frac. 1); fractional north half (frac. N. ½), southeast quarter (S. E. ¼) of section three (3); east half (E. ½) of section eleven (11) in township five (5) north of range eleven (11) west. All of section twenty-nine (29); all of fractional section thirty-one (fac. 31), and al of section thirty-three (33), in township six (6) north of range ten (10) west. All of sections thirteen (13), fifteen (15), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), east half (E. ½) of thirty-three (33), and all of thirty-five (35) in township six (6)

north of range eleven (11) west, all of San Bernardino base and meridian, containing eleven thousand two hundred and fifty-eight (11,258.36) 36-100 acres."

MR. CALL.—Same objections.

Document last offered marked Dfendant's Exhibit, No. 45, before E. H. L amme, Examiner.

MR. GRAVES.—Also contract, No. 4,721, for the following described lands:

"All of fractional sections one (1), three (3), and five (5); all of section nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17), twenty-one (21), twenty-three (23), twenty-seven (27), and thirty-three (33), in township six (6) north of range twelve (12) west, all of San Bernardino base and meridian, containing seventy-six hundred and sixty-eight (7668.27) 27-100 acres."

MR. CALL.—Same objections.

Document last offered marked Dfendant's Exhibit, No. 46, before E. H. Lamme, Examiner.

MR. GRAVES.—Also contract, No. 4,722, for the following described lands:

"All of fractional section seven (frac'l 7), in township eight (8) north, of range fourteen (14) west. All of section five (5); all of fractional section seven (frac. 7); all of sections nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17); all of fractional nineteen (frac. 19); all of twenty-one (21), twenty-nine (29), and all of fractional thirty-one (frac. 31), in township eight (8) north, of range fifteen (15) west. All of fractional section thirty-one (frac'l 31), in township nine (9) north of range fifteen (15) west, all of San Bernardino base and meridian, containing eighty-two hundred and seventy-three (8273.34) 34-100 acres.

MR. CALL.—Same objections.

Document last offered marked Dfendant's Exhibit, No. 47, before E. H. Lamme, Examiner.

MR. GRAVES.—Also contract No. 4,723, for the following described lands:

"All of fractional sections five (5) and seven (7); all of sections nine (9) and seventeen (17); fractional section nineteen (19); all of sections twenty-one (21) and twenty-nine (29); fractional section thirty-one (31); all of section thirty-three (33) in township seven (7) north, range eleven (11) west. All of fractional sections one (1), and three (3), southwest quarter of northeast quarter (S. W. ¼ of N. E. ¼) west half of southeast quarter (W. ½ of S. E. ¼) and west half (W. ½) of section eleven (11); all of section thirteen (13); fractional section nineteen (19); all of sections twenty-three (23), twenty-five (25), twenty-nine (29), thirty-three (33), and thirty-five (35), in township seven (7) north, range twelve (12) west. All of section twenty-five (25) in township seven (7) north, range thirteen (13) west. All of fractional sections five (5), and seven (7), in township eight (8) north, range ten (10) west. All of section eleven (11); fractional section nineteen (19); all of section twenty-nine (29); fractional section thirty-one (31), in township eight (8) north, range eleven (11) west. All of sections twenty-five (25) and thirty-five (35) in township eight (8) north, range twelve (12) west; all of San Bernardino base and meridian, containing seventeen thousand, seven hundred and sixty-eight (17,768.41) 41-100 acres."

MR. CALL.—Same objections.

Document last offered marked Defendant's Exhibit, No. 48, before E. H. Lamme, Examiner.

MR. GRAVES.—All of those contracts being from the Southern Pacific Railroad Company to the Atlantic and Pacific Fibre Importing and Manufacturing Company, limited. Then I also offer a deed from the Atlantic and Pacific Fibre Importing and Manufacturing ompany, to myself, covering all of the land described in the former exhibits, which you will see is also—it is an assignment of all of these contracts, besides being a deed of the lands.

Document last offered marked Defendant's Exhibit, No. 49, before E. H. Lamme, Examiner.

Q.—11. By Mr. Redding.—Did you purchase those lands in good faith? A. Yes sir.

Q.—12. For value received? A. Yes sir.

Q.—13. As stated in the deed? A. Yes sir.

Q.—14. Are you at present holding said lands under the said deeds? A. Yes.

Q.—15. Are you in possession of the same?

A. Well, we are exercising possession; we are keeping other people off of them. Not farming them, but—yes, we are in possesion.

Q.—16. Have you paid all the State, county and municipal taxes and assessments legally levied and assessed upon said lands since the said deed?

A. Well, I have paid some, and there are others that were assessed this year that were cancelled by the order of the District Attorney, holding that they were non-asessable lands. I was ready to pay them provided they were held to be legal.

Q.—17. Then you have paid——

A. All legally assessed taxes, yes sir.

Q.—18. And assessments? A. Yes sir.

Q.—19. Did you buy these lands in good faith?

A. Yes, expecting to make title to them.

Q.—20. And do you hold them as said purchaser and as a citizen of the United States? A. I do.

Q.—21. And as an innocent purchaser?

A. Well——

Q.—22. For value received?

A. I hold them for a valuable consideration.

Q.—23. Well, do you claim to be an innocent purchaser of said lands, under the Act of Congress of March 3, 1887?

A. I think I am protected under the Act of Congress of 1887. I would like to understand this "innocent." What you mean by that? Of course I have notice of the defect—I have notice of the Congressional action taken, and of the pendency of this suit; had it when I bought. Outside of that I consider myself an innocent purchaser. Of course I had that notice of that suit. There is no use denying that. At the same time, I understand—I think I understand, the Act of Congress of 1887, and I think I am protected under it.

MR. REDDING.—That is all.

Cross-Examination.

By MR. CALL.

Q.—24. How much did you pay the Atlantic and Pacific Fibre Importing and Manufacturing Company for these lands?

A. I have not paid them anything in coin. But I have agreements with them which are the equivalent of the coin.

Q.—25. What is the nature of the agreements?

A. I am to protect them in the title, that is protect them

in their original purchase money; make what I can out of it over and above that.

Q.—26. And devote your legal services to that end?

A. Yes. They have to have somebody on this end.

MR. CALL.—That is all.

Adjourned until December 20th, 1893, at 10 o'clock A. M., to meet by consent of counsel at the Main Street Bank and Trust Company's office in the City of Los Angeles.

DEED NO. 4,719.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation, duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company lying in the State of California which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, On the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and fol-

lowed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates, respectively, as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six milions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said railroad company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever

release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill such vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have the power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledeged and re-

corded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said railroad company has sold the lands hereinafter described, pursuant to the foregoing conditions, to the "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited," of London, England, for the sum of five thousand and eighteen 78-100 ($5,018.78) dolars, which sum has been by it fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now therefore, in consideration of the premises, and the said sum of five thousand and eighteen ($5,018.78) 78-100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Atlantic and Pacific Fibre Importing and anufacturing Company, "Limited," and to its successors and assigns, the following described tracts of land situate, lying and being in the County of Los Angeles, and State of California, to wit:

The southwest quarter (S. W. ¼) of section seventeen (17), all of fractional section nineteen (19), all of section twenty-one (21), all of section twenty-seven (27), in township five (5) north of range ten (10) west; the southwest quarter (S. W. ¼) of section three (3); all of fractional section five (5); all of section nine (9); west half (W. ½) of section eleven (11), in township five (5) north of range eleven (11) west; all of fractional section one (1)

in township five (5) north of range twelve (12) west, and west half (W. ½) of section number thirty-three (33), in township six (6) north of range eleven (11) west, all in San Bernardino base and meridian, containing five thousand eighteen (5,018.78) .78 acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises, to the said Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, its successors and assigns, to its and their use and behoof forever.

In testimony whereof the said Southern Pacific Railroad Company has caused these presents to be signed by its Vivce-President and Secretary, and sealed with its corporate seal, and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twenty-third (23rd) day of July, A. D. 1885.

[Seal of Corporation.]

CHAS. F. CROCKER,
Vice-President S. P. R. R. Co.
J. L. WILLCUTT,
Sec. S. P. R. R. Co.
D. O. MILLS, [Seal.]
GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-Fact.

Note.—The word "heirs" in 13th and 37th lines stricken out and the word "successors" substituted therefor, and

the words from "excepting," in the 27th line, to "also," in the 33d line, stricken out before signing.

CHARLES J. TORBERT,
Notary Public.

State of Californa,

City and County of San Francisco—ss.

On this twenty-third (23d) day of July, in the year one thousand eight hundred and eigthy-five (1885), before me, Charles J. Torbert, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such coporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Notarial Seal.] CHARLES J. TORBERT.

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Deed No. 4719, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to the

"Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited." Deed, dated July 23d, 1885. Recorded at request of J. Drew Gay, July 29, 1885, at 54 min. past 2 P. M., in book 144, page 179, records Los Angeles County. Chas. E. Miles, County Recorder. By W. B. Prichard, Deputy. 3.50 paid. U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co. 184 Master's and Examiner's Exhibit, No. 44. E. H. Lamme, Master and Examiner in Chancery. For respondents. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

Southern Pacific Railroad Company.—Land Department.

No. 4720.

This agreement, made at San Francisco, California, this twenty-third (23rd) day of July, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and the "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited," of London, England, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tracts of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of fractional sections three (3), five (5), and seven (7); all of sections nine (9); north half (N. ½) and southeast quarter (S. E. ¼) of section seventeen (17), in township five (5) north, of range ten (10) west; all of frac-

tional section one (frac'l. 1), fractional north half (frac'l. N. ½) southeast quarter (S. E. ¼) of section three (3), east half (E. ½) of section eleven (11), in township five (5) north, of range eleven (11) west; all of section twenty-nine (29); all of fractional section thirty-one (fac'l 31), and all of section thirty-three (33), in township six (6) north, of range ten (10) west; all of sections thirteen (13), fifteen (15), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), east half (E. ½) of thirty-three (33) and all of thirty-five (35), in township six (6) north, of range eleven (11) west, all of San Bernardino base and meridian, containing eleven thousand two hundred and fifty-eight 36-100 (11,258.36-100) 36-100 acres, for the sum of eleven thousand two hundred and fifty-eight 36.100 ($11,258.36-100) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of eleven thousand two hundred and fifty-eight 36-100 ($11,258.36-100) dollars (which sum has this day been fully paid), in United States gold coin of the present standard of value, and also to pay all taxes and assesments that may at any time be levied or imposed upon said land, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall bear interest at the rate of seven per cent. per annum, and shall be paid by said party of the second part to said party of the first part be-

fore he shall be entitled to a conveyance of said land.

It is further agreed, that upon the punctual payment of said taxes and assessments, and interest thereon, and the strict and faithful performance by the party of the second part, its legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and surrender of this instrument, execute and deliver to the party of the second part, its successors and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said land.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; and that, in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part all money that may have been paid to it by it on account of any of such tracts as it shall fail to procure patent for, the

amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possesion of them to the party of the second part, and will not be responsible to it for damages or costs in case of its failure to obtain and keep such possesion.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtainnig of patent for them by the party of the first part; and that it will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by indorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the party of the second part has signed its name hereto, by its agent.

JEROME MADDEN,

Land Agent.

J. L. WILLCUTT,

Secretary.

ATLANTIC AND PACIFIC FIBRE IMPORTING AND MANUFACTURING CO., L'd. [Seal.]

By J. DREW GAY, its Agent.

Schedule of prices at which the lands described in this contract have been sold this twenty-third (23rd) day of July, 1885.

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
All of fractional	3	5 N	10 W	S B	669.08	$1.00	$669.08
All of fractional	5	do	do	do	661.66	$1.00	$661.66
All of fractional	7	do	do	do	611.40	$1.00	$611.40
All of	9	do	do	do	640.00	$1.00	$640.00
N ½	17	do	do	do	320.00	$1.00	$320.00
SE ¼	do	do	do	do	160.00	$1.00	$160.00
All of fractional	1	do	11 W	do	650.92	$1.00	$650.92
Frac'l N ½	3	do	do	do	342 52	$1.00	$342.52
SE ¼	do	do	do	do	160.00	$1.00	$160.00
E ½	11	do	do	do	320.00	$1.00	$320.00
All of	29	6 N	10 W	do	640.00	$1.00	$640.00
All of fractional	31	do	do	do	642.78	$1.00	$642.78
All of	33	do	do	do	640.00	$1.00	$640.00
All of	13	6 N	11 W	do	640.00	$1.00	$640.00
All of	15	do	do	do	640.00	$1.00	$640.00
All of	21	do	do	do	640.00	$1.00	$640.00
All of	23	do	do	do	640.00	$1.00	$640.00
All of	25	do	do	do	640.00	$1.00	$640.00
All of	27	do	do	do	640.00	$1.00	$640.00
E ½	33	do	do	do	320.00	$1.00	$320.00
All of	35	do	do	do	640.00	$1.00	$640.00

JEROME MADDEN,

Land Agent.

State of California,

County of Los Angeles—ss.

On this 8th day of March, one thousand eight hundred and eighty-six, before me, W. H. Gray, a Notary Public in and for said Los Angeles County, residing therein, duly commissioned and sworn, personally appeared J. Drew Gay, nown to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of Los Angeles, the day and year first above written.

[Notarial Seal.] W. H. GRAY,
Notary Public.

State of California,
City and County of San Francisco—ss.

On this thirteenth day of January, A. D. one thousand eight hundred and eighty-six, before me, Holland Smith, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year last above written.

[Notarial Seal.] HOLLAND SMITH,
Notary Public, 307 Montgomery St.

In consideration of the above and foregoing assignment to me, I hereby agree with the said Atlantic and Pacific Fibre I. and M. Co., and with the said Southern Pacific Railroad Company, that I will do and perform all the stipulations and conditions in the said contract No. 4720 required to be done and performed by the said assignor.

March 18th, 1893. J. A. GRAVES. [Seal.]

San Francisco, Cal., March 28th, 1893.

The Southern Pacific Railroad Company hereby consents to the annexed assignment of the within contract, No. 4720, to J. A. Graves.

SOUTHERN PACIFIC RAILROAD COMPANY.

By JEROME MADDEN, its Land Agent.

[Endorsed]: Unpatented Lands, No. 4720. Contract for a deed. Southern Pacific R. R. Company to the "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited," dated July 23rd, 1885. Recorded at request of Wells, Fargo & Co., April 16, 1886 at 4 min. past 9 A. M., in book 158, page 23, Los Angeles County records. Frank A. Gibson, County Recorder. 4.30 due. U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co. 184 Master's and Examiner's Exhibit, No. 45. E. H. Lamme, Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

Southern Pacific Railroad Company.—Land Department. No. 4721.

This agreement, made at San Francisco, California, this twenty-third (23rd) day of July, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and the "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited," of London, England, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tracts of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of fractional sections one (1), three (3), and five (5); all of sections nine (9), eleven (11), thirteen

(13), fifteen (15), seventeen (17), twenty-one (21), twenty-three (23), twenty-seven (27), and thirty-three (33), in township six (6) north, of range twelve (12) west, all of San Bernardino base and meridian, containing seventy-six hundred and sixty-eight (7668.27-100) 27-100 acres, for the sum of seventy-six hundred and sixty-eight 27-100 ($7668.27-100) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of seventy-six hundred and sixty-eight 27-100 ($7668.27-100) dollars (which sum has this day been fully paid), in United States gold coin of the present standard of value, and also to pay all taxes and assessments that may at any time be levied or imposed upon said land, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall bear interest at the rate of seven per cent. per annum, and shall be paid by said party of the second part to said party of the first part before he shall be entitled to a conveyance of said land.

It is further agreed, that upon the punctual payment of said taxes and assessments, and interest thereon, and the strict and faithful performance by the party of the second part, its legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and surrender of this instrument, execute and deliver to the party of the second part, its succes-

sors and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, its successors and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said land.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; and, that in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part, for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by it on account of any of such tracts as it shall fail to procure patent for,

the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to it for damages or costs in case of its failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that it will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by indorsement and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Sec-

retary and Land Agent, and the party of the second part has signed its name hereto, by its Agent.

JEROME MADDEN,
Land Agent.
J. L. WILLCUTT,
Secretary.

ATLANTIC & PACIFIC FIBRE IMPORTING AND MANUFACTURING COMPANY, LIMITED,
By J. DREW GAY, its Agent. [SEAL.]

Schedule of prices at which the lands described in this contract have been sold, this twenty-third (23rd) day of July, 1885.

FRACTION.	SEC.	TP.	RANGE.	B & M.	No. OF ACRES.	RATE PER ACRE.	AMOUNT.
All of fractional	1	6 N	12 W	S B	637.98	$1.00	$637.98
All of fractional	3	do	do	do	636.17	$1.00	$636.17
All of fractional	5	do	do	do	634.12	$1.00	$634.12
All of	9	do	do	do	640.00	$1.00	$640.00
All of	11	do	do	do	640.00	$1.00	$640.00
All of	13	do	do	do	640.00	$1.00	$640.00
All of	15	do	do	do	640.00	$1.00	$640.00
All of	17	do	do	do	640.00	$1.00	$640.00
All of	21	do	do	do	640.00	$1.00	$640.00
All of	23	do	do	do	640.00	$1.00	$640.00
All of	27	do	do	do	640.00	$1.00	$640.00
All of	33	do	do	do	640.00	$1.00	$640.00

JEROME MADDEN
Land Agent.

State of California,
County of Los Angeles,—ss.

On this 8th day of March, one thousand eight hundred and eighty-six, before me W. H. Gray, a Notary Public in and for said Los Angeles County, residing therein, duly commissioned and sworn, personally appeared J. Drew Gay, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and

affixed my official seal, at my office in the City and County of Los Angeles, the day and year first above written.

[Notarial Seal.] W. H. GRAY,
Notary Public.

State of California,
City and County of San Francisco,—ss.

On this thirteenth day of January, A. D., one thousand eight hundred and eighty-six, before me, Holland Smith, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year last above written.

[Notarial Seal.] HOLLAND SMITH,
Notary Public, 307 Montgomery St.

In consideration of the above and foregoing assignment to me, I hereby agree with the said Atlantic & Pacific Fibre Importing and Manufacturing Co., and with the Southern Pacific Railroad Company, that I will do and perform all the stipulations and conditions in the said Contract, No. 4721, required to be done and performed by the said assignor.

March 18th, 1893.

J. A. GRAVES. [SEAL.]

San Francisco, Cal., March 28th, 1893.

The Southern Pacific Railroad Company, hereby con-

sents to the annexed assignment of the within contract, No. 4,721, to J. A. Graves.

SOUTHERN PACIFIC RAILROAD COMPANY.

By JEROME MADDEN, Its Land Agent.

[Endorsed]: Unpatented Lands. No. 4,721. Contract for a deed. Southern Pacific R. R. Company to The "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited." Dated July 23rd, 1885. Recorded at request of Wells, Fargo & Co., April 16th, 1886, at 5 min. past 9 A. M., in book 155, page 380, records Los Angeles County, Frank A. Gibson, County Recorder, by W. B. Prichard, Deputy. 3.90 due. U. S. Cir. Court, Southern District California. United States *vs.* S. P. R. R. Co. 184 Master's and Examiner's No. 46. E. H. Lamme, Master and Examiner in Chancery. For Defendants. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

Southern Pacific Railroad Company. No. 4723.—Land Department.

This agreement, made at San Francisco, California, this twenty-third (23rd) day of July, A. D., 1885, between the Southern Pacific Railroad Company, party of the first part and the "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited," of London, England, party of the second part, witnesseth: that the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part, the following tracts of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of fractional sections five

(5) and seven (7); all of sections nine (9) and seventeen (17); fractional section nineteen (19); all of sections twenty-one (21) and twenty-nine (29); fractional section thirty-one (31); all of section thirty-three (33), in township seven (7) north, range eleven (11) west. All of fractional sections one (1) and three (3); southwest quarter of northeast quarter (S. W. ¼ of N. E. ¼); west half of southeast quarter (W. ½ of S. E. ¼) and west half (W. ½) of section eleven (11). All of section thirteen (13); fractional section nineteen (19); all of sections twenty-three (23), twenty-five (25), twenty-nine (29), thirty-three (33) and thirty-five (35) in township seven (7) north, range twelve (12) west. All of section twenty-five (25) in township seven (7) north, range thirteen (13) west. All of fractional sections five (5) and seven (7) in township eight (8) north, range ten (10) west. All of section eleven (11); fractional section nineteen (19); all of section twenty-nine (29); fractional section thirty-one (31), in township eight (8) north, range eleven (11) west. All of sections twenty-five (25) and thirty-five (35), in township eight (8) north, range twelve (12) west. All of San Bernardino base and meridian, containing seventeen thousand, seven hundred and sixty-eight (17,768.41) 41-100 acres, for the sum of seventeen thousand, seven hundred and sixty-eight ($17,768 41-100) 41-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of seventeen thousand seven hundred and sixty-eight ($17,768 41-100) 41-100 dollars, (which sum has this day been fully paid,) in United States gold coin of the present stand-

ard of value, and, also to pay all taxes or assessments that may at any time be levied or imposed upon said land, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall bear interest at the rate of seven per cent. per annum, and shall be paid by said party of the second part to said party of the first part before he shall be entitled to a conveyance of said land.

It is further agreed, that upon the punctual payment of said taxes and assessments, and interest thereon, and the strict and faithful performance by the party of the second part, its legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, its successors and assigns, a grant, bargain and sale deed of said premises reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operation and repair of said railroads, and with the condition that the party of the second part, its successors and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that the party of the second part may

at once enter upon, take, and hold possession of said land.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; and, that in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest,) to the party of the second part, all moneys that may have been paid to it by it on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts, by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to it for damages or costs in case of its failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the land herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally de-

termined that patents cannot be obtained.

It is further agreed, that the party of the second part, will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that it will not obtain or hold possesion of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by indorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed its name hereto, by its Agent.

JEROME MADDEN,
Land Agent.
J. L. WILLCUTT,
Secretary.

ATLANTIC & PACIFIC FIBRE IMPORTING AND MANUFACTURING COMPANY, LIMITED,
By J. DREW GAY, its Agent. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this twenty-third (23rd) day of July. 1885.

Fraction.	Sec.	Tp.	Range.	B & M.	No. of Acres.	Rate per Acre.	Amount.
All of fractional	5	7 N	11 W	S B	646.78	$1.00	$646.78
All of fractional	7	do	do	do	645.18	$1.00	$645.18
All of	9	do	do	do	640.00	$1.00	$640.00
All of	17	do	do	do	640.00	$1.00	$640.00
All of fractional	19	do	do	do	641.21	$1.00	$641.21
All of	21	do	do	do	640.00	$1.00	$640.00
All of	29	do	do	do	640.00	$1.00	$640.00
All of fractional	31	do	do	do	642.56	$1.00	$642.56
All of	33	do	do	do	640.00	$1.00	$640.00

Fractions.	Sec.	Tp.	Range.	B & M.	No. of Acres.	Rate per Acre.	Amount.
All of fractional	1	7 N	12 W	S B	643.00	$1.00	$643.00
All of fractional	3	do	do	do	645.98	$1.00	$645.98
SW ¼ of NE ¼ W ½ of SE ¼ and W ½	11	do	do	do			
All of	13	do	do	do	640.00	$1.00	$640.00
All of fractional	19	do	do	do	645.92	$1.00	$645.92
All of	23	do	do	do	640.00	$1.00	$640.00
All of	25	do	do	do	640.00	$1.00	$640.00
All of	29	do	do	do	640.00	$1.00	$640.00
All of	33	do	do	do	640.00	$1.00	$640.00
All of	35	do	do	do	640.00	$1.00	$640.00
All of	25	7 N	13 W	S B	640.00	$1.00	$640.00
All of fractional	5	8 N	10 W	do	639.28	$1.00	$639.28
All of fractional	7	do	do	do	628.84	$1.00	$628.84
All of	11	8 N	11 W	do	640.00	$1.00	$640.00
All of fractional	19	do	do	do	654.78	$1.00	$654.78
All of	29	do	do	do	640.00	$1.00	$640.00
All of fractional	31	do	do	do	654.88	$1.00	$654.88
All of	25	8 N	12 W	S B	640.00	$1.00	$640.00
All of	35	do	do	do	640.00	$1.00	$640.00

JEROME MADDEN,

Land Agent.

State of California,

County of Los Angeles,—ss.

On this 8th day of March, one thousand eight hundred and eighty-six, before me, W. H. Gray, a Notary Public in and for said Los Angeles County, residing therein, duly commissioned and sworn, personally appeared J. Drew Gay, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of Los Angeles, the day and year first above written.

[Notarial Seal.] W. H. GRAY,

Notary Public.

State of California,

City and County of San Francisco,—ss.

On this thirteenth day of January, A. D., one thousand eight hundred and eighty-six, before me, Holland Smith,

a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Railroad Company, the corporation, that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year last above written.

[Notarial Seal.] HOLLAND SMITH,
Notary Public, 307 Montgomery St.

In consideration of the above and foregoing assignment to me, I hereby agree with the said Atlantic and Pacific Fibre Importing and Manufacturing Co., and with the Southern Pacific Railroad Company, that I will do and perform all the stipulations and conditions in the said contract, No. 4,723, required to be done and performed by the said assignor.

March 18th, 1893.

J. A. GRAVES. [Seal.]

San Francisco, Cal., March 28th, 1893.

The Southern Pacific Railroad Company hereby consents to the annexed assignment of the within contract, No. 4723, to J. A. Graves.

SOUTHERN PACIFIC RAILROAD COMPANY.
By JEROME MADDEN, its Land Agent.

[Endorsed]: Unpatented Lands. No. 4723. Contract for a deed. Southern Pacific R. R. Company to The "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited." Dated July 23rd, 1885. Recorded at

request of Wells, Fargo & Company, April 16, 1886, at 6 min. past 9 A. M., in book 155, page 374, records Los Angeles County, Frank A. Gibson, County Recorder, By W. B. Prichard, Deputy. 4.70 due. U. S. Cir. Court, Southern District California. United States *vs.* S. P. R. R. Co., 184 Master's and Examiner's Exhibit No. 48, E. H. Lamme, Master and Examiner in Chancery. O. K. for Respondents. Filed Feb. 23, 1894, Wm. M. Van Dyke, Clerk.

EXHIBIT No. 49,—DEED TO J. A. GRAVES.

Resolved, that the Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, a corporation duly organized and existing under the laws of Great Britain, for and in consideration of the sum of fifty thousand dollars, ($50,000.00) to it in hand paid, will convey to Jackson Alpheus Graves, attorney at law, resident of Alhambra, in the County of Los Angeles, State fo California, and having his office and place of business, at rooms 19, 20, and 21 Baker Block, City of Los Angeles, County of Los Angeles, State of California, all those certain tracts of land situated in the County of Los Angeles, and State of California, particularly described as follows, to wit:

Section 7, township 8 north, range 14 west;

Sections 5, 7, 9, 11, 13, 15, 17, 19, 21, 29, and 31, in township 8 north, range 15 west;

Sections 29, 31, and 33, in township 6 north, range 10 west;

Sections 5 and 7 in township 8 north, range 10 west;

Sections 13, 15, 21, 23, 25, 27, 33, and 35, in township 6 north, range 11 west;

Sections 5, 7, 9, 17, 19, 21, 29, 31, and 33, in township 7 north, range 11 west;

Sections 11, 19, 29, and 31 in township 8 north, range 11 west;

Sections 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 27, and 33, in township 6 north, range 12 west;

Sections 1, 3, 11, 13, 19, 23, 25, 29, 33, and 35, in township 7 north, range 12 west;

Sections 25 and 35, in township 8 north, range 12 west;

Section 25 in township 7 north, range 13 west;

Section 1, in township 5 north, range 12 west;

Sections 1, 3, 5, 9, and 11, in township 5 north, range 11 west; and

Sections 3, 5, 7, 9, 17, 19, 21, and 27, in township 5 north, range 10 west, all in San Bernardino base and meridian.

And will also sell, assign, transfer, and set over to the said Jackson Alpheus Graves that certain agreement, dated July 23, 1885, between the Southern Pacific Railroad Company, party of the first part, and said Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, a corporation, of London, England, party of the second part, recorded in book 155, page 374, of deeds, in the office of the Recorder of Los Angeles County, California.

Also that other agreement to convey, executed by the same party to the same party, dated July 23, 1885, recorded in book 155, page 380 of deeds, in the office of the Recorder of Los Angeles County, State aforesaid.

Also that other certain agreement, dated July 23, 1885, between the same parties, recorded in book 158, page 23, of deeds, in the office of the Recorder of Los Angeles County.

Also that other certain agreement between the same parties, dated July 23, 1885, recorded in book 159, page 87 of deeds, in the office of the Recorder of Los Angeles County.

Together with all the rights, of every nature and description, of said Atlantic & Pacific Fibre Importing and Manufacturing Company, limited, under said agreements, and each of them. And will authorize the said Graves to enforce said agreements, and each and every of them, for his own use and benefit.

And James Morton Bell, President, and Courtenay Clark, Secretary of said corporation, are hereby authorized, empowered and directed, for and on behalf of, and as the act of said corporation, to make, execute and deliver to the said Graves, a deed, grant, bargain, and sale in form, conveying to him all of the property hereinbefore described, including the said real property, and said agreements to convey.

Office of the Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, Suffolk House, Laurence Poutney Hill, F. C., London, England.

I hereby certify the foregoing to be a true copy of a resolution duly entered on the 27th, day of January, 1893, in the minutes of the Board of Directors of the Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, by virtue of a resolution duly adopted by said Board, at a meeting thereof duly held on said 27th day of January, 1893.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said corporation, this 27th day of January, 1893.

[Corporate Seal.] COURTENAY CLARK,

Secretary of the Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited.

The seal of the company was affixed in the presence of

JAMES MORTON BELL, President.

COURTENAY CLARK, Secretary.

Whereas, the Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, is a corporation duly formed and existing under the laws of England, and is doing business in the State of California, United States of America, and has its principal place of business, for such business as it transacts in said United States of America, in the County of Los Angeles, in the State of California; and

Whereas, said corporation, by the foregoing resolution, did agree to sell and convey to Jackson Alpheus Graves, described in said resolution, the real property in said resolution described, and did further agree to sell, assign, transfer and set over the agreement in said resolution described, to said Graves;

Now therefore, in consideration of said resolution, and of the payment to it of the sum of fifty thousand dollars, ($50,000.00) as in said resolution stated,

This agreement, made this 27th day of January, 1893, between said Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, a corporation duly organized and existing under the laws of Great Britain, party of the first part, and Jackson Alpheus Graves, attorney at law, resident of Alhambra, in the County of Los Angeles, State of California, having his office and place of business at rooms 19, 20, and 21, Baker Block, City of Los Angeles, County of Los Angeles, State of California, party of the second part, witnesseth:

That the party of the first part does, by these presents, grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all those certain lots, pieces or parcels of land, situate, lying and being in the said County of Los Angeles, State of California, particularly described in said resolution, and does further sell, assign, transfer and set over to said party of the second part those certain contracts and agreements executed by the Southern Pacific Railroad Company, a corporation, to said party of the first part, which said contracts and agreements are fully described in said resolution; and does hereby authorize the said party of the second part to enforce said agreements, and each and every of them, for his own use and benefit.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular, the said premises, together with all the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, has caused its corporate name and seal, by virtue of the resolution aforesaid, to be hereunto affixed and these presents to be executed by James Morton Bell, its President, and Courtenay Clark, its Secretary, this 27th day of January, 1893.

THE ATLANTIC AND PACIFIC FIBRE IMPORTING AND MANUFACTURING COMPANY, LIMITED.

By JAMES MORTON BELL, President.

[Corp. Seal.] COURTENAY CLARK, Secretary.

The seal of the company was affixed in the presence of

JAMES MORTON BELL, President.

COURTENAY CLARK, Secretary.

Kingdom of Great Britain,

County of Middlesex,—ss.

On this twenty-seventh day of January, 1893, before me, William Eustace Venn, Notary Public in and for said County of Middlesex, in England, duly commissioned and sworn, personally appeared James Morton Bell and Courtenay Clark, known to me to be the President and Secretary, respectively of the corporation described in, and who executed the within and annexed instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City of London, County of Middlesex, the day and year in this certificate first above written. Veritas:

[Notarial Seal.] W. E. VENN.

Notary Public in and for the County of Middlesex, Kingdom of Great Britain.

(Postage revenue, 27-1-93, one shilling.)

E. Pluribus Unum. Consulate-General of the United States of America for Great Britain and Ireland, at London.

I, John C. New, Consul-General of the United States of America, at London, England, do hereby make known and certify to all whom it may concern that William Eustace Venn, who hath signed the annexed certificate, is a Notary Public duly admitted and sworn and practicing in the City

of London, aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof, I have hereunto set my hand and affixed my seal of office at London aforesaid this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety-three.

[U. S. Consulate-General Seal.] JNO. C. NEW.
Consul General.

[Endorsed]: Deed. The Atlantic & Pacific Fibre Importing and Manufacturing Co., to Jackson Alpheus Graves. Dated January 27th, 1893. Recorded at request of J. A. Graves, Feb. 15, 1893, at 40 min. past 3 P. M., in book 837, page 183 of deeds, Los Angeles County Records. Arthur Bray, County Recorder, By A. A. Bayley, Deputy. 390-35-79 D. U. S. Cir. Court, Southern District California, United States *vs.* S. P. R. R. Co. 184 Master's and Examiner's Exhibit No. 49, E. H. Lamme, for respondents. Filed Feb. 23, 1894, Wm. M. Van Dyke, Clerk.

December 27, 1893.

Present: J. H. Call, Esq., Special Assistant United States Attorney, for Complainant; W. J. Trask, Esq., for Defendants.

M. W. STIMSON, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK.

Q. 1. What is your name?

A. Martin W. Stimson; M. W. Stimson.

Q. 2. Where were you born?

A. I was born in the State of Maine, town of Gray.

Q. 3. Where do you reside?

A. I reside in Los Angeles.

Q. 4. Are you one of the defendants in this action?

A. Yes sir.

Q. 5. Have you purchased any lands involved in this action from the Southern Pacific Railroad Company?

MR. CALL. Objected to as incompetent, immaterial, irrelevant, and not the best evidence.

A. Yes sir, I purchased those contracts.

Q. 6. By MR. TRASK. Is your purchase from that Company represented by written instruments?

MR. CALL. Same objections.

A. Yes sir.

Q. 7. By MR. TRASK—(Witness shown two contracts)—I will ask you to look at those?

MR. CALL. Same objections.

A. Yes sir, I purchased those; those are the contracts I purchased on.

Q. 8. By MR. TRASK. Which you received from the Southern Pacific Railroad Company when you purchased them?

MR. CALL. Same objections.

A. Yes sir.

MR. TRASK. Defendants now offer in evidence, contract for a deed, numbered 8,861, Southern Pacific Railroad Company to M. W. Stimson, dated December 22, 1887, signed by Jerome Madden, Land Agent, S. P. R. R. Co., Fred Madge, Secretary S. P. R. R. Co., pro tem, and Martin

W. Stimson, the land described in this contract being the northeast quarter of section thirty-five, township seven north, range fourteen west, S. B. M., containing one hundred and sixty acres, situated in the County of Los Angeles, State of California.

Also, contract for a deed, numbered 8,862, Southern Pacific Railroad Company to M. W. Stimson, dated December 22, 1887, signed by the same parties as in the preceding contract offered in evidence, for the following described land, situate in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the southeast quarter of section thirty-five, township seven north, range fourteen west, San Bernardino base and meridian, containing one hundred and sixty acres.

MR. CALL. Same objection to each offer.

Q. 9. By MR. TRASK. I will ask you if you purchased this land upon the date that these contracts bear date?

MR. CALL. Same objections.

A. Yes sir.

Q. 10. By MR. TRASK. Being the 22nd day of December, 1887?

MR. CALL. Same objections.

A. Yes sir.

Q. 11. By MR. TRASK. How much did you pay for this land?

MR. CALL. Same objections.

A. I think I paid fifty cents an acre on the land, and then I think six months' interest. About two hundred dollars, I think I paid.

Q. 12. By MR. TRASK. Since then, how much have you paid?

MR. CALL. Same objections.

A. Nothing.

Q. 13. By MR. TRASK. Nothing since then?

MR. CALL. Same objections.

A. No sir; it is unpatented lands.

Q. 14. By MR. TRASK. Have there been any taxes assessed on this land?

MR. CALL. Same objections.

A. I think not, but I have never paid any attention to it.

Q. 15. By MR. TRASK. Have you paid the interest since then?

MR. CALL. Same objections.

A. No sir.

Q. 16. By MR. TRASK. Never paid anything?

MR. CALL. Same objections.

A. No sir.

Q. 17. By MR. TRASK. Are you in possession of the land at the present time?

MR. CALL. Same objections.

A. Well, I——Yes. Yes I made a filing on the land. I have never been on the land—I have been on it, but I don't know that I could claim to be in possession of it.

Q. 18. By MR. TRASK. You claim to be a bona-fide purchaser of this land?

MR. CALL. Same objections.

A. Yes sir.

Q. 19. By MR. TRASK. Without notice of the rights of the Government in or to it?

MR. CALL. Same objections.

A. I bought it, yes sir.

MR. TRASK. That is all.

It is admitted that copies may be made of the last documents offered and when certified by the Examiner may be filed in lieu of the originals and the originals withdrawn; subject to the same objections. Said certified copies are marked respectively Defendants' Exhibit, No. 110 and 111, before E. H. Lamme, Examiner.

Cross-Examination.

By MR. CALL.

Q. 20. For what reason did you cease paying the interest and principal?

A. Because the land was unpatented and didn't suppose they could give us the land. I was so advised not to pay, because they could not deed the land.

Q. 21. You knew about the claim of the Government to the overlapping grants, I suppose?

A. Well, I never looked into it very much. To tell the truth, my brother made this purchase for me while I was in the East. And he says I should not pay up because they could not deed me the land. We made a filing through the Government on this land some little time ago in the United States office.

Q. 22. What kind of an application was that? Under what law?

A. This filing?

Q. 23. Yes sir. Desert land?

A. No; let me see. This was railroad land.

Q. 24. Yes, I know. I am referring to the filing that you made.

A. Oh, the filing. Now, let me see.

MR. TRASK. That is objected to on the ground it would be incompetent; not the best evidence.

A. (Continued.) I could not answer that. My brother took more charge of it than I did; really bought it when I was away.

Q. 25. By MR. CALL. What you were seeking to do was to obtain title from the Government.

A. Well, they advised that we should make this filing, any way. They had taken this action, and they said we had better make this filing, and so we made it.

Q. 26. In the Land Office?

A. Yes sir, in this Land Office.

MR. CALL. That is all.

MR. TRASK. That is all.

Defendants' Exhibit before the Special Examiner No. 110.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 8,861.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consider-

ation of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of iand, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed, and the survey approved and filed according to law, to wit: The northwest quarter (N. W. ¼) of section seven (7), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: One hundred and sixty ($160.00) 00-100 dollars, and also $44.80, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises,

or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained the party of the first part will, after the receipt of a patent therefor from the United States upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that until the full payment of said

purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fa l to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all

moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to the repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed that the party of the second part

shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent, S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEORGE LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

NW ¼	7	3 N	16 W	S B	160 00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,324. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $44.80, due on the 8th day of May of each year. Remainder of principal, $640.00, due on the 8th day of May, 1895. (Marked "Defendants' Exhibit before the Special Examiner, No. 110. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Defendants' Exhibit before the Special Examiner, No. 111.

G. 291—2-29-88-2,000.

Southern Pacific Railroad Company.—Land Department.

No. 8,862.

This agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law, to wit: The southeast quarter (S. E. ¼) of section seven (7), township three (3) north, range sixteen (16) west, San Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of eight hundred ($800.00) 00-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described and to pay to the party of the first part the said sum of eight hundred ($800.00) 00-100 dollars, as follows, to wit: One hundred and sixty ($160.00) 00-100 dollars, and also $44.80, one year's interest in advance on the remainder, in United States gold coin of the present standard of value,

on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of six hundred and forty ($640.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder, and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land

one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the part of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land ,without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possesison of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure

patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or cost in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those contracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them

by the party of the first part; and that he will not obain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed, that the party of the second part

shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its secretary, and land agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
J. L. WILLCUTT,
Secretary S. P. R. R. Co.
GEO. LOOMIS. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this eighth (8th) day of May, 1890.

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
SE ¼	7	3 N	16 W	S B	160.00	$5.00	$800.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.

[Endorsed]: Unpatented Lands, No. 10,325. Contract for a Deed.—Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890. Interest, $44.80, due on the 8th day of May of each year. Remainder of

principal, $640.00, due on the 8th day of May, 1895. (Marked "Defendans' Exhibit before the Special Examiner, No. 111. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, October 4th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

W. E. McVAY, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK—

Q. 1. What is your name? A. W. E. McVay.

Q. 2. Where were you born? A. Illinois.

Q. 3. Are you one of the defendants in this case?

A. I believe so.

Q. 4. Have you purchased any of the land involved in this action?

Mr. Call—Objected to as incompetent, irrelevant, and immaterial, and not the best evidence.

A. I have.

Q. 5. By MR. TRASK—I n what form is your purchase represented?

MR. CALL—Same objections.

A. A contract for a deed.

Q. 6. By MR. TRASK—Were you the original party?

MR. CALL—Same objections.

A. No, sir.

Q. 7. By MR. TRASK—It has been assigned to you?

MR. CALL—Same objections.

A. Yes, sir.

Q. 8. By MR. TRASK—Is the assignment attached to the contract?

MR. CALL—Same objections.

A. Yes, sir.

Q. 9. By MR. TRASK—I will ask you if this is the contract and the assignment?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—Defendantsoffer in evidence contract for a deed from the Southern Pacific Railroad Company to Charles M. Stimson, dated December 22, 1887, and being numbered 8863, for the following described land, situate in the County of Los Angeles, State of California, and knownand designated on the public surveys of the United States as the Northwest quarter of Section 35, Township 7 North, Range 14 West, S. B. M., containing one hundred and sixty acres of land, together with the assignment thereof endorsed thereon, from Charles M. Stimson to W. E. McVay, dated the 15th day of July, 1889.

MR. CALL—Same objections.

Q. 10. By MR. TRASK—I will ask you what you paid for this land?

MR. CALL—Same objections.

A. Two and a half an acre.

Q. 11. By MR. TRASK—You were to pay, or have paid?

MR. CALL—Same objections.

Q. 12. By MR. TRASK—Have you paid any portion of it?

MR. CALL—Same objections.

A. I have paid the first payment, $102.40.

Q. 13. By MR. TRASK—To whom did you pay that?

MR. CALL—Same objections.

A. To my grantor, Charles Stimson.

Q. 14. By MR. TRASK—And you are obligated for the balance, are you?

MR. CALL—Same objections.

A. Yes, sir.

Q. 15. By MR. TRASK—Have you paid all the taxes upon it since you became the assignee of this contract?

MR. CALL—Same objections.

A. I don't think there has been any assessed.

Q. 16. Well, you claim to be an innocent purchaser of this land without notice of any rights of the Government of the United States at all to it?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—That is all.

Cross-Examination.

By MR. CALL—

Q. 17. The purchase price was two dollars and a half an acre? A. Yes, sir.

Q. 18. And you paid one-fifth of it, fifty cents an acre?

A. Yes, sir.

Q. 19. Together with the interest? A. Yes, sir.

It is stipulated that a copy of the document last offered in evidence, when certified by the Examiner, may be filed in lieu of the original, and the original thereupon with-

drawn, subject to the same objections. Said copy to be marked Defendant's Exhibit No. 108, before E. H. Lamme, Examiner.

G. 291. (10-25-87-2,000.)

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 8863. Land Department.

This agreement, made at San Francisco, California, this twenty-second day (22nd) of December, A. D. 1887, between the Southern Pacific Railroad Company, party of the first part, and Charles M. Stimson, of the County of Los Angeles, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part, the following tract of land, situate in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the Northwest quarter (N. W. ¼) of Section Thirty-five (35), Township Seven (7) North, Range Fourteen (14) West, San Bernardino Base and Meridian, containing one hundred and sixty (160) acres, for the sum of four hundred ($400) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of four hundred ($400) dollars, as follows, to wit: Eighty ($80) dollars, and also $22.40 one year's interest, in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day

been fully paid), and the remainder, to wit: the sum of three hundred and twenty ($320) dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin, of the present standard of value, at its office in the City and County of San Francisco, on or before the 22nd day of December, 1892; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the actual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of the said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed, that, until the full payment of said purchase money, interest, taxes, and assessments, no strip

or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstance beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurnace that patent or title will be procured; that in case it is finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second

part all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to payments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents can not be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part, and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed, that the party of the second part shall pay $3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and the Land Agent, and the party of the second part has signed his name hereto.

(Signed) JEROME MADDEN,
Land Agent S. P. R. R. Co.

(Signed) FRED'K MADGE,
Secretary S. P. R. R. Co., pro tem.

(Signed) CHAS. M. STIMSON, (Seal).

Schedule of prices at which the lands described in this Contract have been sold this 22nd day of December, 1887.

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES	RATE PER ACRE.	AMOUNT.
N. W. ¼	35	7 N.	14 W.	S. B.	160	$2.50	$400

JEROME MADDEN,
Land Agent S. P. R. R. Co.

I, Chas. M. Stimson, the party of the second part in the within Contract No. 8863, for and in consideration of six hundred and forty dollars, to me in hand paid, do hereby sell, assign, and transfer ALL my right, title, interest and claim in and to the within described tract or parcel of land, and the within Contract No. 8863, unto W. E. McVay, his heirs and assigns, forever, subject to the stipulations and conditions therein contained which are to be performed by said assignee.

Given under my hand and seal, this 15th day of July, A. D. 1889.

(Signed) CHARLES M. STIMSON, (Seal).

STATE OF CALIFORNIA,
County of Los Angeles—ss.

On this 15th day of July, in the year one thousand eight hundred and eighty-nine, before me, George E. Pratt, a Notary Public in and for said County, personally appeared Chas. M. Stimpson, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Signed) GEO. E. PRATT,
Notary Public.

On this 15th day of July, 1889, in consideration of the above and foregoing assignment to me, I hereby agree with the assignor therein named, and with the Southern Pacific Railroad Company, to do and perform all the stipulations and conditions in the within contract required to be done and performed by the party thereto of the second part.

(Signed) W. E. McVAY, (Seal).

P. O. Address, Care Security Loan & Trust Company,
23 W. 2nd Street, Los Angeles.

San Francisco, Cal., July 18th, 1889.

The Southern Pacific Railroad Company hereby consents to the above assignment to W. E. McVay.

SOUTHERN PACIFIC RAILROAD COMPANY.

(Signed) By JEROME MADDEN,
Its Land Agent.

[Endorsed]: Compared correct copy. Unpatented lands. No. 8863. Contract for a deed. Southern Pac. R. R. Co. to Charles M. Stimson. Dated December 22nd, 1887. Interest $22.40, due on the 22nd day of December of each year; remainder of principal, $320.00, due on the 22nd day of December, 1892. (ok B.) U. S. Cir. Court, Southern District California. U. S. of A. vs. S. P. R. R. Co., et als. 184. Master's and Examiner's Exhibit No. 108. E. H. Lamme, Master and Examiner in Chancery for Defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

W. D. GOULD, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. REDDING—

Q. 1. What is your name? A. Will. D. Gould.

Q. 2. Where do you reside? A. Los Angeles.

Q. 3. Where were you born?

A. In Cabot, Vermont.

Q. 4. United States of America. A. Yes, sir.

Q. 5. Are you a citizen of the United States?

A. Yes, sir.

Q. 6. Are you one of the defendant purchasers in this case? A. Yes, sir.

Q. 7. What land do you hold as purchaser, which land is involved in this action?

MR. CALL—Mr. Redding, with your consent, the same objections entered to the previous testimony may be considered as being made to this testimony.

MR. REDDING—That is satisfactory.

A. My wife and I hold together jointly the following described land:

All the east half of the southeast quarter of section thirty-one, township two north, range twelve west, S. B. M., containing eighty acres.

All the west half of the southeast quarter of section twenty-five in township two north, range thirteen west, San Bernardino Base and Meridian, containing eighty acres.

All of the northeast quarter of section twenty-five, township two north, range thirteen west, San Bernardino Base and Meridian, containing one hundred and sixty acres.

Also, the east half of the southeast quarter of section twenty-five, township two north, range thirteen west, San Bernardion Base and Meridian, containing eighty acres.

All of the northwest quarter of section twenty-five in township two north, range thirteen west, San Bernardino Base and Meridian, containing one hundred and sixty acres.

All of lots two in the southwest quarter and east half of the southwest quarter and west half of the southeast quarter of section thirty-one, township two north, range twelve west, Mount Diablo Base and Meridian, and containing two hundred and fifty-one hundredths acres.

All of lot one in the southwest quarter of section thirty-one, township two north, range twelve west, San Bernardino Base and Meridian, and containing forty and fifty-one hundredths acres.

All of fractional northeast quarter of the northeast

quarter of section one, township one north, range thirteen west, San Bernardino Base and Meridian, containing six and eighty-eight one-hundredths acres.

All of the northwest quarter of section thirty-one, township two north, range twelve west, San Bernardino Base and Meridian, containing one hundred and sixty acres.

Q. 8. By MR. REDDING—Have you the title papers with you in reference to the purchase of this land from the Southern Pacific Railroad Company to yourself and wife?

A. I have. (Witness produces papers.)

MR. REDDING—Mr. Call, will it be agreeable to you to have Mr. Gould prepare copies which shall be certified and introduced in lieu of the original, and when introduced to have the same force and effect as the originals?

MR. CALL—With the understanding that they are subject to the same objections heretofore entered and now entered to the original.

MR. REDDING—And are you willing that the certified copies shall have the same force and effect as the originals?

MR. CALL—Yes, sir.

MR. REDDING—Defendants offer in evidence a contract for a deed, No. 4726, from the Southern Pacific Railroad Company to Mrs. Mary L. Gould for the land therein described and heretofore described by the witness now testifying, and asked that it be marked as Defendants' Exhibit 91, before E. H. Lamme, Examiner, and a certified copy of the one now offered be made and be put on file in lieu of the original.

MR. CALL—Same objections.

MR. REDDING—Defendants next offer in evidence contract for deed No. 4736, from the Southern Pacific Railroad Company to Mrs. Mary L. Gould, conveying the land therein mentioned, and ask that a certified copy of the same may be marked Defendants' Exhibit 92, before E. H. Lamme, Examiner.

Defendants next offer in evidence a deed, No. 4172, from the Southern Pacific Railroad Comptny, D. O. Mills and Gerrit L. Lansing, Trustees, to Mrs. Mary L. Gould, conveying the land therein described, and ask that a certified copy of the same may be marked Defendants' Exhibit No. 93, E. H. Lamme, Examiner.

Defendants next offer in evidence deed No. 1637, from the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, Trustees, to Mrs. Mary L. Gould, conveying the land therein described, and ask that the same be marked as Defendants' Exhibit No. 94, before E. H. Lamme, Examiner.

Defendants next offer in evidence deed No. 1096, from the Southern Pacific Railroad Company, et al., to Mrs. Mary L. Gould, conveying the land therein described, and ask that a certified copy of the same may be marked Defendants' Exhibit No. 95, before E. H. Lamme, Examiner.

Defendants next offer in evidence contract for a deed No. 7973, from the Southern Pacific Railroad Company to Will D. Gould, conveying the land therein described, and ask that a certified copy of the same may be marked Defendants' Exhibit No. 96, before E. H. Lamme, Examiner.

Defendants next offer in evidence deed No. 7872, Southern Pacific Railroad Company, et al., to Will D.

Gould, conveying the land therein described, and ask that a certified copy of the same may be marked Defendants' Exhibit No. 97, before E. H. Lamme, Examiner.

Defendants next offer in evidence contract for a deed No. 4794, Southern Pacific Railroad Company to Mrs, Mary L. Gould, conveying the land therein described, and ask that a certified copy of the same may be marked Defendants' Exhibit No. 98, before E. H. Lamme, Examiner.

Defendants next offer in evidence deed No. 4168, Southern Paciern Pacific Railroad Company, et al., to James M. Hait, conveying the land herein described, and ask that a certified copy of the same be marked as Defendants' Exhibit No. 99, before E. H. Lamme, Examiner.

Defendants next offer in evidence deed from J. H. Book, administrator of the estate of Frank O. Carrie, deceased, to James M. Hait, conveying the land therein described, and ask that a certified copy of the same may be marked Defendants' Exhibit No. 100, before E. H. Lamme, Examiner.

Defendants next offer in evidence a deed from James M. Hait to Mary L. Gould, conveying the land therein described, and ask that a certified copy of the same be marked Defendants' Exhibit No. 101, before E. H. Lamme, Examiner.

Defendants next offer in evidence deed from Thomas E. Gould to Mary L. Gould, conveying the land therein described, dated January 2nd, 1886, and ask that a certified copy of the same may be marked Defendants' Exhibit No. 102, before E. H. Lamme, Examiner.

Defendants next offer in evidence a deed from Mary L. Gould to Will D. Gould, conveying the land therein de-

scribed, dated March 28, 1888, and ask that a certified copy of the same be marked as Defendants' Exhibit No. 103, before E. H. Lamme, Examiner.

Q. 9. By MR. REDDING—Mr. Gould are you the Will D. Gould mentioned in several of these deeds just offered?

MR. CALL—Same objections.

A. Yes, sir.

Q. 10. Are you the husband of Mary L. Gould.

MR. CALL—The same objections.

A. Yes, sir.

Q. 11. Mentioned therein?

MR. CALL—Same objections.

A. Yes, sir.

Q. 12. Is the Mary L. Gould mentioned therein your wife?

MR. CALL—Same objections.

A. Yes, sir.

Q. 13. By MR. REDDING—Are you and she occupying the lands described in each of the several documents last introduced as purchasers thereof?

MR. CALL—Same objections.

A. Yes, sir.

Q. 14. Is your wife a citizen of the United Staes? United States?

MR. CALL—Same objections.

A. Yes, sir.

Q. 15. By MR. REDDING—Where was she born?

MR. CALL—Same objections.

A. Born in Katonah, New York.

Q. 16. By MR. REDDING—Were you man and wife at

all the times mentioned in these documents last introduced?

MR. CALL—Same objections.

A. Yes, sir.

Q. 17. By MR. REDDING—How long have you been married?

MR. CALL—Same objections.

A. Married in 1875.

Q. 18. By MR. REDDING—Have you and she paid all the taxes, State, county and municipal, which have been levied and assessed upon said land, and all other legal assessments against said land, since the purchase of the same?

MR. CALL—Same objections.

A. Yes, sir. I suppose the second payment of taxes for the fiscal year, not yet delinquent, have not yet been paid, the first payment having been paid.

Q. 19. By MR. REDDING—Have you paid all the taxes which are now due?

MR. CALL—Same objections.

A. I am not delinquent in any one case. They have all been paid prior to the present fiscal year. The present fiscal year is in two payments, and the first payment is paid.

Q. 20. By MR. REDDING—Are you and your wife in possession of these lands?

MR. CALL—Same objections.

A. Yes, sir; there never has been any adverse possession.

Q. 21. By MR. REDDING—Do you hold these lands as citizens of the United States?

MR. CALL—Same objections.

A. Yes, sir.

Q. 22. By MR. REDDING—Do you hold them as bona fide purchasers for value received?

MR. CALL—Same objections.

A. Yes, sir.

Q. 23. By MR. REDDING—Did you and your wife pay the sums of money in said documents set forth as having been paid to the Southern Pacific Railroad Company and the other vendors mentioned in said documents?

MR. CALL—The same objections.

A. Yes, sir.

Q. 24. Are you now holding those lands, and claiming to hold them as the owners thereof, for value received?

Mr. Call—The same objection.

A. Yes, sir.

MR. REDDING—That is all.

MR. REDDING—Mr. Call, will you stipulate that the testimony of Mrs. Mary L. Gould will be and has been to the same effect as that of her husband, without the necessity of putting her upon the stand?

MR. CALL—That may be so stipulated.

MR. REDDING—Will you also stipulate that the signature of the witnesses, Will D. Gould and Mary L. Gould, may be waived to their testimony, and that their testimony shall stand with the same force and effect as if signed by them?

MR. CALL—That may be understood.

Cross-Examination.

MR. CALL—That is all.

Q. 25. Were these deeds which you have offered here made in pursuance to written contracts or otherwise?

A. My memory is that in each case I first took a contract and made part payment, and afterwards made full payment and took the deeds. It is possible that one or two of those deeds were issued immediately upon full payment.

Q. 26. Was the contract which you took similar in form to that numbered 7973?

A. I think so. They are a printed form used by the company. I never examined them critically enough to know whether they are all exactly alike or not.

Mr. Call—That is all.

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 4726. Land Department.

This agreement, made at San Francisco, California, this twenty-fifth (25th) day of July, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and Mrs. Mary L. Gould, of the County of Los Angeles, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part, as her own separate property and for her own separate use and benefit, the consideration of this contract being of her own separate estate, the following tract of land, situated in the County of Los Angeles, State of California, which has never been surveyed by the United States Government Surveyors,

but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law, to wit: The Northwest quarter (N. W. ¼) of Section Thirty-one (31), Township Two (2) North, Range Twelve (12) West, San Bernardino Base and Meridian, containing one hundred and sixty (160 acres, for the sum of four hundred ($400.00) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of four hundred ($400.00) dollars, as follows, to wit: Eighty ($80.00) dollars, and $22.40, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this Contract, which two last mentioned sums have this day been fully paid, and the remainder, to wit: the sum of three hundred and twenty ($320.00) dollars, with interest thereon, annually in advance at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the twenty-fifth (25th) day of July, 1890; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same

rate, and be paid in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, her legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and surrender of this instrument, execute and deliver to the party of the second part, her heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder or interest, taxes or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may without notice enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part all moneys that may have been paid to it by her on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession

of them to the part of the second part, and will not be responsible to her for damages or costs in case of her failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that she will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its

Secretary, and Land Agent, and the party of the second part has signed her name hereto.

JEROME MADDEN,
Land Agent.
MARY L. GOULD, (Seal).

J. L. WILLCUTT,
Secretary.

STATE OF CALIFORNIA,
City and County of San Francisco—ss.

On this fourth (4th) day of June, A. D. one thousand eight hundred and eighty-nine (1889), before me, E. B. Ryan, a Notary Public in and for said city and county, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent of the Corporation described in and who executed the within and annexed instrument, and acknowledged to me that such Corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed m yofficial seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

Schedule of prices at which the lands described in this Contract have been sold this twenty-fifth (25th) day of July, 1885.

JEROME MADDEN,
Land Agent.

....., the within named purchaser , for and in consideration of ..... dollars, to ..... in hand paid, do hereby sell, assign and transfer all right, title, interest and claim in and to the within described tract or parcel of land, and the within contract No. .... unto. ..... heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under ..... hand and seal , this ..... day of ....., A. D. 18 .

..... (Seal).

..... (Seal).

State of California,

County of .....—ss.

On this ..... day of ....., in the year one thousand eight hundred and ....., before me, a ..... in and for said county, personsonally appeared ....., known to me to be the person whose name ..... subscribed to the above instrument, and acknowledged to me that ..... executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

....., 18...

In consideration of the above and foregoing assignment to ..... hereby agree with the said ..... and with the Southern Pacific Railroad Company, that ..... will do and perform all the stipulations and conditions in the said contract No.

....., required to be done and performed by the said .....

....., (Seal).

....., (Seal).

....., 18...

The Southern Pacific Railroad Company hereby consents to the above assignment to .....

.....

.....

[Endorsed]: Unsurveyed and Unpatented Lands. No. 4726. Contract for a Deed. Southern Pacific R. R. Company to Mrs. Mary L. Gould, dated July 25th, 1885. Interest, $22.10, due on the 25th day of July of each year. Remainder of principal, $320.00, due on the 25th day of July, 1890. U. S. Cir. Court, Southern District California. U. S. of A. vs. S. P. R. R. Co., et als. 184. Master's and Examiner's Exhibit No. 91. E. H. Lamme, Master and Examiner in Chancery for Defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. Recorded at request of W. D. Gould at 22 min. past 3 P. M., in Book 538, page 11, of Deeds of Los Angeles County Records. John W. Francis, County Recorder. By J. N. Torrey, Jr., Deputy. 1.80 14.

G. 299. (5-18-89-500.)

DEED No. 4172.

To All to Whom These Presents Shall Come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees of all the lands of the said Southern Pacific

Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, On the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G: Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds of five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date of April first, eighteen hundred and seventy-five, and the said several suc-

ceeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct: All of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, Said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said Trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

And whereas, On the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, On the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L.

Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said Deed of Trust;

And whereas, Said Deed of Trust further provided, that for the sake of convenience in making said conveyances, the said Trustees should have power to act, by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, On the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State California, their true and lawful attorney in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, The said Railroad Company contracted to sell the lands hereinafter described, pursuant to the foregoing conditions, to Mrs. Mary L. Gould, of the County of Los Angeles, State of California, for the sum of five hundred and twenty-one ($521.50) 50-100 dollars, which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, Trustees as aforesaid:

Now, therefore, in consideration of the premises, and the said sum of five hundred and twenty-one ($521.50) 50-100 dollars, the receipt whereof is hereby acknowl-

edged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Mrs. Mary L. Gould as her own separate property, and for her own separate use and benefit, the consideration hereof being of her own separate estate and to her heirs and assigns, the following described tracts of land situate, lying and being in the County of Los Angeles, and State of California, to wit:

Lot Two in Southwest quarter (Lot 2 in S. W. ¼); East half of Southwest quarter (E. ½ of S. W. ¼) and West half of Southeast quarter (W. ½ of S. E. ¼) of Section No. Thirty-one (31), in Township Two (2) North, of Range Twelve (12) West, San Bernardino Base and Meridian, containing two hundred (200 50-100) 50-100 acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging: Excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since January 2d, 1885, the said purchaser having heretofore agreed with said Company to pay the same, and also reserving all claim of the United States to said tracts as mineral land.

To have and to hold the aforesaid premises, to the said Mrs. Mary L. Gould, her heirs and assigns, to her and their use and behoof forever.

In testimony whereof, The said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden,

have subscribed their names and affixed their seals this twenty-eighth day of January, A. D. 1890.

(Seal.) TIMOTHY HOPKINS,
Vice Pres. S. P. R. R. Co.
J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, (Seal.)
GERRIT L. LANSING, (Seal.)
Trustees,
By JEROME MADDEN,
Their Joint Attorney-in-fact.

State of California,
City and County of San Francisco.—ss.

On this twenty-eighth (28th) day of January, in the year one thousand eight hundred and ninety (1890), before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Timothy Hopkins, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County

of San Francisco, State of California, on the day and year above written.

(Seal.) E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

(Endorsed): Deed No. 4172. Southern Pacific Railroad Co. D. O. Mills and Gerrit L. Lansing, Trustees. To Mrs. Mary L. Gould, Deed. Dated January 28th, 1890. Recorded at request of Grantee Jan. 31, 1890, at 46 min. past 12 M., in Book 621, page 306, of Deeds, Los Angeles County Records. John W. Francis, County Recorder. By W. F. X. Parker, Deputy. Fees, $2.30. Folios 16. T. 36.

W. D. Gould, Temple Block.

U. S. Cir. Court, Southern District California. U. S. of A. vs. S. P. R. R. Co. et als. 184. Master's and Examiner's Exhibit No. 93. E. H. Lamme, Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

DEED No. 1637.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, On the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all

its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive. Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct. All of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, Said deed of trust, among other matters,

provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales have been made, and the purchase money fully paid in, said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company.

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that, for the sake of convenience in making said conveyances,

the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney which should be duly ackuowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place, and stead, to make, execute and deliver all conveyances required of them as aforesaid;

And whereas, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Mrs. Mary L. Gould, of the County of Los Angeles, in the State of California, for the sum of two hundred ($200.00) dollars, which sum has been by her fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now, therefore, in consideration of the premises, and the said sum of two hundred ($200.00) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Mrs. Mary L. Gould, as her own separate property, and for her own separate use and benefit, the consideration hereof being of her own sepa-

rate estate and to her heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to wit: The east Ealf of the South East quarter (E. ½ of S. E. ¼) of Section No. Twenty-five (25) in Township Two (2) North of Range Thirteen (13) West, San Bernardino Base and Meridian, containing eighty (80) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises, to the said Mrs. Mary L. Gould, her heirs and assigns, to her and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twenty-fourth day of November, A. D. 1883.

(Seal.) CHAS. CROCKER,
Pres. S. P. R. R. Co.
J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS. (Seal.)
GERRIT L. LANSING. (Seal.)
Trustees.
By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On this twenty-fourth day of November, in the year one thousand eight hundred and eighty-three, before me, Holland Smith, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Chas. Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary, of the Corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Seal.) HOLLAND SMITH,
Notary Public in and for the City and County of San Francisco and State of California.

[Endorsed]: 85. Deed No. 1637. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Mrs. Mary L. Gould, Deed. Dated November 24th, 1883. Recorded at request of Will D. Gould, Jul. 26, 1887, at 30 min. past 2 P. M., in Book 266, page 164, of

Deeds, Los Angeles County Records. Frank A. Gibson, County Recorder, by Arthur Bray, Deputy. Fees, $2.50. Folios, 14. U. S. Circuit Court, Southern District California. U. S. of A. vs. S. P. R. R. Co. et als. 184. Master's and Examiner's Exhibit No. 94. E. H. Lamme, Master and Examiner in Chancery for Defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

DEED No. 1096.

To All to Whom These Presents Shall Come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Lloyd Tevis, both of the City and County of San Francisco, and State of California, Trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to the said D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued, and to be issued, by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A and followed by the succeeding letters in regular order to and including the

letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payabye semi-annually; said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates, respectively, as the Board of Directors of said Southern Pacific Railroad Company may direct: All of said bonds aggregating the sum of forty-six millions of dollars.

And whereas, Said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said Trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from

any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company.

And whereas, Said Deed of Trust further provided that, for the sake of convenience in making said conveyances, the said Trustees should have power to act by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person.

And whereas, On the 15th day of July, 1875, said Trustees, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco ,and State of California, their true and lawful attorney, in their names, place and stead, to make execute and deliver all conveyances required of them, as aforesaid.

And whereas, The said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Mrs. Mary L. Gould, of the County of Los Angeles, in the State of California, for the sum of two hundred ($200.00) dollars, which sum has been by her fully paid to the said D. O. Mills and Lloyd Tevis, Trustees as aforesaid:

Now, therefore, in consideration of the premises, and the said sum of two hundred ($200.00) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and

Lloyd Tevis, Trustees as aforesaid, do grant, bargain, sell and convey to the said Mrs. Mary L. Gould, as her own separate property and for her own separate use and benefit, the consideration hereof being of her own separate estate and to her heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to wit: The West half of Southeast quarter (W. ½ of S. E. ¼) of Section No. Twenty-five (25), in Township Two (2) North, of Range Thirteen (13) West, San Bernardino base and meridian, containing eighty (80) acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold, the aforesaid premises, to the said Mrs. Mary L. Gould, to her heirs and assigns, to her and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Lloyd Tevis, Trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twenty-fifth (25th) day of July, A. D. 1881.

(Seal.)

CHAS. CROCKER,
Pres't S. P. R. R. Co.
J. L. WILLCUTT,
Sec'y S. P. R. R. Co.

D. O. MILLS, (Seal.)
LLOYD TEVIS, (Seal.)
Trustees.
By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On this twenty-fifth (25th) day of July, in the year one thousand eight hundred and eighty-one (1881), before me, Charles J. Torbert, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles Crocker, known to me to be the President, and J. L. Wilcutt, known to me to be the Secretary, of the Corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the Attorney-in-fact of D. O. Mills and Lloyd Tevis, and acknowledged to me that he subscribed the names of the said D. O. Mills and Lloyd Tevis thereto as principals, and his own name as Attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Seal.) CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, and State of California.

(Endorsed): 86 Deed No. 1096. Southern Pacific Railroad Co., D. O. Mills and Lloyd Tevis, to Mrs. Mary L. Gould. Deed. Dated July 25th, 1881. Recorded at request of Will D. Gould, Jul. 26, 1887, at 31 min. past 2 p. m. In book 266, page 168, of deeds, Los Angeles County Records, Frank A. Gibson, County Recorder. By

Arthur Bray, Deputy. Fees $2.50. Folios 14 T. U. S. Cir. Court, Southern District California, U. S. of A. vs. S. P. R. R. Co., et als., 184. Master's and Examiner's Exhibit No. 95. E. H. Lamme, Master and Examiner in Chancery. For defendant.

Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

G. 326. (6-29-87-1000.)

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 7973. LAND DEPARTMENT.

Article of Agreement, made at San Francisco, California, this eighth (8th) day of August, A. D. 1887, between the Southern Pacific Railroad Company, party of the first part, and Will D. Gould, of Los Angeles County, State of California, party of the second part.

The said party of the first part, in consideration of the agreements of the said party of the second part herein contained, hereby agrees to sell unto the said party of the second part, the following tract of land, situate in the County of Los Angeles, State of California, to wit: and known and designated on the public surveys of the United States as the Northwest quarter (N. W. ¼) of Section No. Twenty-five (25), in Township Two (2) North of Range Thirteen (13) West, San Bernardino Base and Meridian, containing one hundred and sixty (160.00) 00-100 acres, for the sum of four hundred ($400.00) 00-100 dollars, United States gold coin, of which sum the said party of the second part has this day paid the sum of eighty ($80.00) 00-100 dollars, with twenty-two ($22.40) 40-100 dollars, one year's interest on the remainder of said purchase

money; the remainder of said principal sum, amounting to three hundred and twenty ($320.00) 00-100 dollars, United States gold coin, with interest thereon annually in advance at the rate of seven per cent. per annum, to be paid by the said party of the second part on or before the eighth (8th) day of August, 1892.

And the said party of the first part hereby further agrees that upon the punctual payment of said purchase money and interest, and the strict and faithful performance by the said party of the second part, his legal representatives or assigns, of all the agreements herein contained, then the said party of the first part will cause to be made and executed to the said party of the second part, his heirs and assigns, upon request and surrender of this contract, a deed of grant, bargain and sale, for the conveyance of said premises.

And the said party of the second part hereby agrees to pay to the said Southern Pacific Railroad Company, its successors or assigns, the said sum of three hundred and twenty ($320.00) 00-100 dollars, United States gold coin of the present standard of value, with interest thereon, annually in advance, at the rate of seven per cent per annum, at its office in the city of San Francisco, on or before the 8th day of August, 1892, both principal and interest payable in United States gold coin of the present standard of value, and until the full payment of said purchase money and interest, will permit no strip or waste to be made on said premises, and no wood or growing trees to be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection

of buildings or fences, without the previous written consent of the said party of the first part. And if the said party of the second part shall fail to make punctually any of said payments of interest or prinacipal, or shall fail to comply strictly with any of the stipulations of this contract, then the said party of the first part, its successors or assigns, shall have the right to enter upon and take possession of the said premises, with all the improvements thereon.

It is further mutually agreed and understood that the said party of the second part shall have the immediate possession and enjoyment of said premises, and, if the same be in the adverse possession of a third party, the right to use at his own cost and charge the name of the party of the first part to recover the same by action. And that, in consideration of such possession and enjoyment he will pay all taxes and assessments that may be, at any time, imposed upon said premises. And it is further agreed that, should said party of the second part fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, the said party of the first part may pay the same, and add the amount thereof to the price to be paid for said premises, and such taxes or assessments, with interest at the rate of seven per cent. per annum, shall be paid before said party of the second part shall be entitled to a conveyance of said premises.

The party of the second part hereby agrees to pay $3.00 for expenses of the acknowledgements to the deed that shall be issued on this contract.

This contract shall not be assignable, except upon the consent of said party of the first part, and the written

promise of the assignee to perform all the undertakings and promises of the said party of the second part as above set forth.

In testimony whereof, the said party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the said party of the second part has signed his name hereto.

JEROME MADDEN, Land Agent. (Seal.)

WILL D. GOULD. (Seal.)

J. L. WILLCUTT, Secretary.

State of California,

City and County of San Francisco.—ss.

On this fourth (4th) day of June, A. D. one thousand eight hundred and eighty-nine (1889), before me, E. B. Ryan, a Notary Public in and for said city and county, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent of the corporation described in, and who executed, the within and annexed instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

(Seal.) E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

G. 299. (1-22-87-500.)

DEED No. 7872.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees of all the lands of the said Southern Pacific Railroad Company lying in the State of California which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Ser-

ies G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding Series to bear such dates respectively as the said Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser to purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms

of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that, for the sake of convenience in making said conveyances, the said trustees should have the power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerritt L. Lansing, acting under the power so vested in them, did nominate, constitute, and appoint, by letter of attorney duly acknowledged and recorded aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place, and stead, to make, execute, and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Will D. Gould of the County of Los Ange-

les, in the State of California, for the sum of four hundred ($400.00) 00-100 dollars, which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now, therefore, in consideration of the premises, and the said sum of four hundred ($400.00) 00-100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Will D. Gould and his heirs and assigns, the following described tract of land, situate, lying, and being in the County of Los Angeles, and State of California, to wit: The North East quarter (N. E. ¼) of Section Twenty-five (25), in Township Two (2), North of Range Thirteen (13) West, San Bernardino Base and Meridian, containing one hundred and sixty (160.00) 00-100 acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises, to the said Will D. Gould, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden,

have subscribed their names and affixed their seals, this eighth (8th) day of August, A. D. 1887.

(Seal.) CHAS. F. CROCKER,
Pres. S. P. R. R. Co.
J. L. WILLCUTT,
Vice-Pres. S. P. R. R. Co.

D. O. MILLS, (Seal.)
GERRIT L. LANSING, (Seal.)
Trustees,
By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,
City and County of San Francisco.—ss.

On this eighth (8th) day of August, in the year one thousand eight hunndred and eighty-seven, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Chas. F. Crocker, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Sechetary of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and

affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Seal.) E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

(Endorsed): 92 Deed No. 7872. Southern Pacific Railroad Co., D. O. Mills, and Gerrit L. Lansing, trustees, to Will D. Gould, Deed. Dated August 8th, 1887. Recorded at the request of grantee. Sep. 21, 1887, at 38 Min. past 4 p. m., in book 342, page 13, of Deeds, Los Angeles County Records. Frank A. Gibson, County Recorder. By Arthur Bray, Deputy. Fees $2.50. Folios 14. U. S. Cir. Court, Southern District California. U. S. of A. vs. S. P. R. R. Co. et als., 184. Master's and Examiner's Exhibit No. 97. E. H. Lamme, Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

G. 325. (3-4-87-500.)

Deed No. 4168.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its

lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dolalrs each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order, to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters,

provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees, and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Linsing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that, for the sake of convenience in making said conveyances,

the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute, and deliver all conveyances required of them as aforesaid;

And whereas, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Frank O. Carrie, now deceased, for the sum of four hundred 00-100 ($400.00) dollars, which sum has been by him and by James M. Hait (who purchased at Administrator's sale all the interest of said Frank O. Carrie, deceased), fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now, therefore, in consideration of the premises, and the said sum of four hundred 00-100 ($400 00-100) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said James M. Hait and his heirs and assigns, the following described tract

of land situate, lying, and being in the County of Los Angeles and State of California, to wit: The East half of South East quarter (E. ½ of S. E. ¼) of Section No. Thirty-one (31) in Township Two (2), North of Range Twelve (12) West, San Bernardino Base and Meridian, containing eighty (80) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of unto appertaining and belonging: Excepting and reserving, however, for Railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the Railroad of said Company, or any branch Railroad now or hereafter constructed on said lands, and the right to use all water needed for the operating and repairing of said Railroad; and subject also to the reservation and condition that the said purchaser, heirs and assigns, shall erect and maintain good and sufficient fences on both sides of said strip or strips of land, and also reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises, to the said James M. Hait, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden,

have subscribed their names and affixed their seals this seventh (7th) day of May, A. D. 1888.

(Seal.) CHAS. F. CROCKER,
Vice-Pres. S. P. R. R. Co.
J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, (Seal.)
GERRIT L. LANSING, (Seal.)
Trustees,
By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,
City and County of San Francisco.—ss.

On this seventh day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and

affixed my official seal at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Seal.) E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

This indenture, made the 15th day of March, in the year of our Lord one thousand eight hundred and eighty-eight, between James M. Hait, of the City and County of Los Angeles, State of California, the party of the first part, and Mary L. Gould, wife of Will D. Gould, of the City and County of Los Angeles, State of California, the party of the second part;

Witnesseth, that the said party of the first part, for and in consideration of the sum of ($1375.00) thirteen hundred and seventy-five dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, and to her heirs and assigns forever, all that certain lot and parcel of land, situate, lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit:

All of the East Half (½) of the South East Quarter of Section Thirty-one (31) in Township Two (2) North, Range Twelve (12) West, San Bernardino Base and Meridian.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever, as her own separate property and for her own separate use and benefit, the consideration of this deed being of her own separate estate.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES M. HAIT. (Seal.)

Signed, sealed and delivered in the presence of

(Seal.)

State of California,
County of Los Angeles.—ss.

On this 23rd day of March, in the year one thousand eight hundred and eighty-eight, before me, N. Lindenfeld, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared James M. Hait, known to me to be the same person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Seal.) N. LINDENFELD,
Notary Public.

(Endorsed): 118. James M. Hait to Mary L. Gould. Deed. Dated March 15th, 1888. Recorded at request of Will D. Gould, Jun. 2, 1888, at 16 Min. past 4 p. m., in

book 425, page 303, of Deeds, Los Angeles County Records, Frank A. Gibson, County Recorder, by Arthur Bray, Deputy. Fees, $. Folios, . 1 10 G.

U. S. Circuit Court, Southern District California. U. S. of A. vs. S. P. R. R. Co. et als, 184. Master's and Examiner's Exhibit No. 101. E. H. Lamme, Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

This indenture, made the 28th day of March, in the year of our Lord one thousand eight hundred and eighty-eight, between Mary L. Gould, wife of Will D. Gould, of the City and County of Los Angeles, State of California, the party of the first part, and Will D. Gould, of the City and County of Los Angeles, State of California, party of the second part;

Witnesseth, that the party of the first part, for and in consideration of the sum of other considerations and ($2.00) two dollars lawful money of the United States, to her in hand paid b ythe said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey and convey unto the said party of the second part, and to his heirs and assigns forever, those certain lots and parcels of land situate, lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit:

All of an undivided one-half (½) of the following property, to wit:

All of block Fifteen (15), and all of block Seventeen (17) except Lot Ten (10) thereof, of the Woolen Mill Tract in the City of Los Angeles, as designated and described on

map of said tract recorded in book 42 of Deeds, page 409, of the official records of said County, to which reference is hereby made for a more particular description;

Also all of fractional Lot Eight (8) in Block One Hundred and Six (106) in the Bellevue Terrace Tract; also the triangular piece of land at the westerly end of said Lot Eight (8) which would be formed by producing or prolonging the Northerly and Southerly line of said Lot Eight (8) in a Westerly direction until they meet, reference being had for a more particular description to a map of said tract recorded in Book 1, page 462, of the Miscellaneous Records of the Official Records of said County;

Also all of Lot Eight (8) of the Rancho le Canada, as designated and described on map of said Lot and Rancho recorded in Book 4, page 351, of the Miscellaneous Records of the Official Records of said County, to which reference is hereby made for a more particular description;

Also all of the fractional North East Quarter of the North East Quarter of Section One (1), Township One (1) North, Range Thirteen (13) West, San Bernardino Base and Meridian;

Also all of the fractional Section Six (6), in Township One (1) North, Range Twelve (12) West, San Bernardino Base and Meridian;

Also all of the South Half and the North West Quarter of Section Thirty-one (31), Township Two (2) North, Range Twelve (12) West, San Bernardino Base and Meridian;

Also all of the North Half of the North East Quarter and the South East Quarter of the North East Quarter of

Section Thirty-six (36), Township One (1) North, Range (13) West, San Bernardino Base and Meridian;

Also all of the South East Quarter of Section Thirty-one (31), Township Two (2) North, Range Thirteen (13) West, San Bernardino Base and Meridian;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever, as his own separate property.

In witness whereof, the said party of the first part has hereunto set her hand and seal the day and year first above written.

MARY L. GOULD. (Seal.)

Signed, sealed and delivered in the presence of Alfred R. Street. (Seal.)

State of California,
County of Los Angeles.—ss.

On this 28th day of March, in the year one thousand eight hundred and eighty-eight, before me, N. Lindenfeld, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Mary L. Gould (wife of Will D. Gould), known to me to be the person whose name is subscribed to the within instrument, described as a married woman, and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowl-

edged to me that she executed the same, and that she does not wish to retract such execution.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of Los Angeles, the day and year in this certificate first above written.

(Seal.) N. LINDENFELD,
Notary Public.

(Endorsed): 120. Mary L. Gould to Will D. Gould. Deed. Dated March 28th, 1888. Recorded at request of Grantee, Jun. 2, 1888, at 18 Min. past 4 p. m., in Book 425, page 306, of Deeds, Los Angeles County Records. Frank A. Gibson, County Recorder, by Arthur Bray, Deputy. Fees, $. Folios, .

I.50. 9-G.

U. S. Cir. Court, Southern District California. U. S. of A. vs. S. P. R. R. Co. et als., 184. Master's and Examiner's Exhibit No. 103. E. H. Lamme, Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

M. D. PAINTER, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK—

Q. 1. Your name is what? A. M. D. Painter.

Q. 2. Where were you born? A. In Iowa; Cedar County, Iowa.

Q. 3. Where do you reside now? A. Pasadena.

Q. 4. Are you one of the defendants in this action?

A. Yes, sir.

Q. 5. Did you purchase any of the land from the Southern Pacific Railroad Company involved in this action?

MR. CALL—Objected to as incompetent, immaterial, irrelevant, and not the best evidence.

A. I purchased the contract from Mr. Brunk.

Q. 6. By MR. TRASK—You are an assignee of a contract interest in some of the lands involved in this suit?

MR. CALL—Same objections.

A. Yes, sir.

MR. CALL—Same objections.

Q. 7. By MR. TRASK—I will ask you to examine this contract, if you please. Is the interest in this land represented by that contract and the assignment thereof which appears upon it?

MR. CALL—Same objections.

A. It is.

MR. TRASK—Defendants now offer in evidence contract for deed, numbered 4724, Southern Pacific Railroad Company to Daniel D. Brunk, dated July 24, 1885, for the following described property, situate in the County of Los Angeles, State of California, which has never been surveyed by the United States Government surveyors but is described and numbered as if the same had been surveyed, and the survey approved and filed according to law, to wit: The West Half of the North East Quarter of Section Thirty-one, Township Two North, Range Twelve West, San Bernardino Base and Meridian, which said contract is signed by Jerome Madden, Land Agent, J. H. Willcutt, Secretary, and Daniel D. Brunk. To-

gether with the assignment endorsed thereon to M. D. Painter, signed and acknowledged by Daniel D. Brunk.

Mr. Call—Same objections. It is admitted that a copy of the Exhibit offered may be made, and when certified by the Examiner may be filed in lieu of the original with the same effect as if the originals were offered, subject to the same objections made to said evidence.

Said copy to be marked Defendant's Exhibit No. 113, before E. H. Lamme, Examiner.

Q. 8. By MR. TRASK—How much did you pay for this land?

MR. CALL—Same objections.

A. The total payment or the first payment?

Q. 9. By MR. TRASK—How much did you agree to pay for it?

MR. CALL—Same objections.

A. Two hundred dollars.

Q. 10. By MR. TRASK—For the whole tract?

MR. CALL—Same objections.

A. Yes, sir.

Q. 11. By MR. TRASK—How much of that have you paid?

MR. CALL—Same objections.

A. Forty dollars besides the interest.

Q. 12. By MR. TRASK—You paid that to Mr. Brunk, or the Railroad Company?

MR. CALL—Same objections.

A. I paid it to Mr. Brunk. He paid it to the Railroad Company, as the contract shows.

Q. 13. By MR. TRASK—Did you purchase this with-

out any knowledge or notice of any rights of the Govern ment of the United States to this land?

MR. CALL—Same objections.

A. Yes.

Q. 14. By Mr. Trask—There have been no taxes, I suppose, assessed against it?

MR. CALL—Same objections.

A. No; I think not.

Q. 15. By Mr. Trask—Are you in possession of this land now?

MR. CALL—Same objections.

A. Well, I suppose so.

Q. 16. By MR. TRASK—Well, you claim to be an innocent purchaser of it?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—I guess that is all.

Cross-Examination.

By MR. CALL—

Q. 17. Why didn't you make the other payments on that apepar to be due? A. The other payments have never been demanded. As I understood, the land was not surveyed, and the payment could not be demanded.

Q. 18. The payment of $160 appears to have been due July 24, 1890. Did you ever offer to make that payment?

A. Not that I remember of.

Q. 19. Did you ever file on this land as Government land? A. No, sir.

Q. 20. Or offer to file on it? A. No.

Q. 21. Did you know that this land was in the San

Gabriel Timber Reservation? A. No; I am not posted as to that.

MR. CALL—That is all.

The parties hereto waive the signature of the witnesses Thomas Goss, M. W. Stimson, Calvin Hartwell, and M. D. Painter.

Adjourned to December 28, 1893, at 10 a. m.

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 4724. Land Department.

This agreement, made at San Francisco, California, this Twenty-fourth (24th) day of July, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and Daniel D. Brunk, of the County of Los Angeles, State of California, party of the second part,

Witnesseth, that the party of the first part, in consideration of the covenants and agreements of the party of the second part, hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed, and the survey approved and filed according to law, to wit: the West Half of North East Quarter (W. ½ of N. E. ¼) of Section Thirty-one (31), Township Two (2) North, Range Twelve (12) West, San Bernardino Base and Meridian, containing Eighty (80) acres, for the sum of two hundred ($200.00) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore de-

scribed, and to pay to the party of the first part the said sum of two hundred ($200.00) dollars, as follows, to wit: forty ($40.00) dollars, and $11.20, one year's interest, in advance, on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of one hundred and sixty ($160.00) dollars, with interest thereon, annually in advance at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the twenty-fourth (24th) day of July, A. D. 1890; and also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof, and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all such sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed that, upon the actual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this in-

strument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed that, until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take, and hold possession of said premises, provided however, that if the party of the second part shall fail to make any of said payments of remainder or interest, taxes or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take, and hold possession of the said premises, with all the improvements thereon.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a

portion of its said grant, therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that, in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by him on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 4 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not

obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent.

DANIEL D. BRUNK. (Seal.)

J. L. WILLCUTT,
Secretary.

Schedule of prices at which the lands described in this contract have been sold this twenty-fourth day of July, 1885:

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
W. ½ of N. E. ¼	31	2 N.	12 W.	S. B.	80	$2.50	$200.00

JEROME MADDEN, Land Agent.

Daniel D. Brunk, the within purchaser, for and in consideration of three thousand ($3,000.00) dollars, to him in hand paid, does hereby sell, assign and transfer all his right, title, interest, and claim in and to the within described tract or parcel of land, and the within contract No. 4724 unto M. D. Painter, his heirs and assigns forever,

subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under my hand and seal this thirteenth (13th) day of October, A. D. 1886.

DANIEL D. BRUNK. (Seal.)

State of California,
County of Los Angeles.—ss.

On this thirteenth (13th) day of October, in the year one thousand eight hundred and eighty-six, before me, R. Williams, a Notary Public in and for said county, personally appeared Daniel D. Brunk, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. WILLIAMS,
Notary Public.

Pasadena, Cal., October 13th, 1886.

In consideration of the above and foregoing assignment to me, I hereby agree with the said Daniel D. Brunk and with the Southern Pacific Railroad Company that I will do and perform all the stipulations and conditions in the said contract No. 4724 required to be done and performed by the said Daniel D. Brunk.

M. D. Painter. (Seal.)

San Francisco, Cal., Nov. 26, 1886.

The Southern Pacific Railroad Company hereby consents to the above assignment to M. D. Painter.

SOUTHERN PACIFIC RAILROAD COMPANY,
By JEROME MADDEN, Its Land Agent.

(Endorsed): Ex. 113. Unpatented Lands. No. 4724. Contract for a Deed. Southern Pacific R. R. Company to Daniel D. Brunk. Dated July 24th, 1885. Interest $11 20-100 due on the 24th day of July of each year. Remainder of principal, $160 00-100, due on the 24th day of July, 1890.

U. S. Cir. Court, Southern District California. U. S. of A. vs. S. P. R. R. Co., et als., 184. Master's and Examiner's Exhibit No. 113. E. H. Lamme, Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

December 29, 1893.

Present: J. H. Call, Esq., Special Assistant United States Attorney, for complainant; W. J. Trask, Esq., for defendants.

Mr. Vignoli was sworn as interpreter of English and Italian.

STEFANO CUNEO, called for defendants, was sworn and testified through the interpreter, as follows:

Direct Examination.

By MR. TRASK—

Q. 1. What is your name? A. Stefano Cuneo.

Q. 2. Where were you born? A. Italy.

Q. 3. Are you a citizen of the United States? A. Yes, sir.

Q. 4. When were you naturalized? A. It is a good many years ago. I don't recollect the time.

Q. 5. In what State? A. In Los Angeles.

Q. 6. Are you one of the defendants in this action? A. Yes, sir.

Q. 7. Have you purchased any land from the Southern Pacific Railroad Company involved in this action?

MR. CALL—Objected to as incompetent, immaterial, irrelevant, and not the best evidence.

A. Yes, sir.

Q. 8. By MR. TRASK—Is that purchase represented by contract, or deed, from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir; represented by contract and deed.

Q. 9. By MR. TRASK—Contract and deed?

MR. CALL—Same objections.

A. Deed and a contract.

Q. 10. By MR. TRASK—Have you got the deed with you?

MR. CALL—Same objections.

A. Yes.

Q. 11. By MR. TRASK—Witness shown contract numbered 4487, for a deed, Southern Pacific Railroad Company to Stefano Cuneo, dated 30th day of March, 1885, signed by Jerome Madden, Land Agent, J. H. Willcutt, Secretary, witnessed by J. T. Gifford, Southern Pacific Railroad Company, party of the first part, and Stefano Cuneo, the second part, for the following described land, situate in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of fractional of Section Thirty-three, Township Four North, Range Fifteen West, S. B. M., containing six hundred and seventy-six acres. Is this the

contract for deed which you received from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—I now offer this contract in evidence.

MR. CALL—Same objections. It is admitted that a copy may be made of this contract, and when certified by the Examiner, may be introduced in evidence in lieu of the original, subject to the above exceptions. Said copy to be marked Defendant's Exhibit No. 116, before E. H. Lamme, Examiner.

Q. 12. By MR. TRASK—Did you purchase the land described in that contract from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir.

Q. 13. By MR. TRASK—How much did you agree to pay for it?

MR. CALL—Same objections.

A. Dollar an acre.

Q. 14. By MR. TRASK—How much have you paid already?

MR. CALL—Same objections.

A. I have paid not two hundred dollars; something about that.

Q. 15. By MR. TRASK—Are you in possession of that land now?

MR. CALL—Same objections.

A. Yes, sir.

Q. 16. By MR. TRASK—Have you paid the taxes, all of them, that have been assessed against it?

MR. CALL—Same objections.

A. Yes, sir.

Q. 17. By MR. TRASK—Did you purchase it without any notice of any claim of the United States to it?

Mr. Call—Same objections.

A. No, sir; no notice at all.

Q. 18. By MR. TRASK—Do you claim to be a bona fide purchaser of it for value?

MR. CALL—Same objections.

A. Yes, sir; I pay interest on it.

Q. 19. By MR. TRASK—What date did you buy it?

MR. CALL—Same objections.

A. It is so many years I can't tell. It is about nine years. It was when they first put it on sale. I bought it among the first.

MR. TRASK—That is all.

Cross-Examination.

By MR. CALL—

Q. 20. How much have you paid on this contract?

A. Exactly, I don't recollect, but it was in the neighborhood of two hundred dollars.

Q. 21. Why didn't you pay the balance. A. I had not the money, and I agree with the company to pay the interest on the balance the same as I did with the other. That is all the money I had at that time.

Mr. Call—That is all.

Re-Direct Examination.

By MR. TRASK—

Q. 22. Well, have you paid the interest?

MR. CALL—Same objections.

A. Yes, sir.

Re-Cross-Examination.

By MR. CALL—

Q. 23. How much did you pay them this year. A. I paid the interest, $37.35.

THE INTERPRETER—I pay it myself every year for him.

MR. CALL—That is all.

The parties hereby waive the signature of the witness to his testimony.

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 4787. Land Department.

This agreement, made at San Francisco, California, this thirtieth (30th) day of March, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and Stefano Cuneo, of the County of Los Angeles, State of California, party of the second part.

Witnesseth, that the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of fractional, of Section Thirty-three (33), Township Four (4) North, Range Fifteen (15) West, San Bernardino Base and Meridian, containing six hundred and seventy-six (676.36) 36-100 acres, for the sum of six hundred and seventy-six ($676.36) 36-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore de-

scribed, and to pay to the party of the first part the said sum of six hundred and seventy-six ($676.36) 36-100 dollars, as follows, to wit: One hundred and thirty-five ($135.27) 27-100 dollars, and $37.87, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract, and the remainder, to wit: the sum of five hundred and forty-one ($541.09) 09-100 dollars, with interest thereon annually in advance at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the thirtieth (30th) day of March, 1890; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed that, upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and surrender of this instru-

ment, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed that, until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take, and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of remainder or interest, taxes or assessment as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take, and hold possession of the said premises with all the improvements thereon.

It is further agreed between the parties hereto that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall

be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be caluclated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to payments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay, or impede the obtaining of a patent for them by the party of the first part, and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed that this contract shall not be as-

signable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent.

J. F. WILLCUTT,
Secretary.

His
STEFANO (x) CUNEO. (Seal.
Mark.

Witnessed by I. T. GIFFORD.

Schedule of prices at which the lands described in this contract have been sold this thirtieth (30th) day of March, 1885.

FRACTION.	SEC.	TP.	RANGE.	B & M	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
All of fract'al.	33	4 N.	15 W.	S. B.	676.36	$1.00	$676.36

JEROME MADDEN, Land Agent.

(Endorsed as follows): Unpatented Lands. No. 4487. Contract for a deed. Southern Pacific R. R. Company to Stefano Cuneo. Dated March 30th, 1885.

Interest, $37.87, due on the 30th day of March of each year. Remainder of principal, $541.09, due on the 30th day of March, 1890.

GIANBATISTA SURACO, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK—

Q. 1. What is your name? A. Gianbatista Suraco.

Q. 2. Where were you born? A. Italy.

Q. 3. Are you a citizen of the United States? A. Yes, sir.

Q. 4. Where were you naturalized? A. Here in Los Angeles.

Q. 5. By MR. CALL—Did you vote last year? A. Yes, sir.

Q. 6. By MR. TRASK—Are you one of the defendants in this action? A. Yes.

Q. 7. Have you purchased any lands from the Southern Pacific Railroad Company involved in this action?

MR. CALL—Objected to as incompetent, immaterial, irrelevant, and not the best evidence.

A. Yes, sir.

Q. 8. By MR. TRASK—Is that purchase represented by a contract for a deed?

MR. CALL—Same objections.

A. Yes.

Q. 9. By MR. TRASK—Witness shown a contract for a deed, numbered 4488, Southern Pacific Railroad Company to Gianbtista Suraco, signed by Jerome Madden, Land Agent, J. H. Willcutt, Secretary, and Gianbtista Suraco, dated the 30th day of March, 1885, for the following described land, situate in the County of Los Angeles, State of California, known and desig-

nated on the public surveys of the United States as all of Section Twenty-nine, Township Four North, Range Fifteen West, S. B. M., containing six hundred and forty acres of land. Is that the contract you received from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—I now offer this contract in evidence, and ask that it be marked Defendant's Exhibit No. 117, before E. H. Lamme, Examiner.

MR. CALL—Same objections. It is admitted that a copy may be made of the exhibit, and when certified by the Examiner may be offered in lieu of the original, subject to the same objections.

Q. 10. By MR. TRASK—How much did you pay for this land?

MR. CALL—Same objections.

A. I paid two dollars and a half an acre.

Q. 11. By MR. TRASK—How much have you paid on it?

MR. CALL—Same objections.

A. I paid the first payment, which is $509.35, I believe.

Q. 12. By MR. TRASK—To the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir.

Q. 13. By MR. TRASK—Have you paid the interest since then?

MR. CALL—Same objections.

A. Yes, sir.

Q. 14. By MR. TRASK—Each year?

MR. CALL—Same objections.

A. Every year.

Q. 15. By MR. TRASK—Have you paid all the taxes that have been assessed against the land?

MR. CALL—Same objections.

A. Yes, sir.

Q. 16. By MR. TRASK—Are you still in possession of the land?

MR. CALL—Same objections.

A. Yes, sir.

Q. 17. By MR. TRASK—Do you claim to be an innocent purchaser of it for consideration?

MR. CALL—Same objections.

A. Yes, sir.

Q. 18. By MR. TRASK—You purchased it without any knowledge or notice of any rights of the Government of the United States to it?

MR. CALL—Same objections.

A. Yes, sir.

Q. 19. By MR. TRASK—These payments were made to the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—That is all.

Cross-Examination.

By MR. CALL—

Q. 20. How much did you say you had paid for this land? A. Two and a half an acre.

Q. 21. How much did you pay down? A. I believe it is five hundred, but I don't know the interest.

Q. 22. Is it correctly stated in the contract? A. Yes.

Q. 23. The first payment appears to have been three hundred and twenty dollars, as stated in here? A. Well, I counted the interest together.

Q. 24. Oh, yes; but that is the proper amount for the principal? A. Oh, yes.

Q. 25. Have you paid the balance? A. No.

Q. 26. What do you use this land for? A. I use it for grain, wheat; plow.

Q. 27. How much of it do you plow? A. About nearly a hundred acres.

Q. 28. Nearly a hundred? A. Yes, sir.

MR. CALL—That is all.

The parties hereby waive the signature of the witness to his testimony.

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 4488. Land Department.

This agreement, made at San Francisco, California, this thirtieth (30th) day of March, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and Gianbtista Suraco, of the County of Los Angeles, State of California, party of the second part,

Witnesseth, that the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of Section Twenty-nine (29), Township Four (4) North, Range Fifteen (15) West, San Ber-

nardino Base and Meridian, containing six hundred and forty (640.00) 00-100 acres, for the sum of sixteen hundred (1600.00) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of sixteen hundred ($1600.00) dollars, as follows, to wit: three hundred and twenty ($320.00) dollars, and $89.60, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract, and the remainder, to wit: the sum of twelve hundred and eighty ($1280.00) dollars, with interest thereon annually in advance at the rate of seven per cent. per annum, both in United States gold coin, of the present standard of value, at its office in the City and County of San Francisco, on or before the thirtieth (30th) day of March, 1890; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises or any part thereof, at any time when the same shall become due, then the party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed that, upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of

all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

And it is further agreed that, until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take, and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of remainder or interest, taxes or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take, and hold possession of the said premises with all the improvements thereon.

It is further agreed between the parties hereto that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of cir-

cumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by him on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay, or impede the obtaining of patent for them by thep arty of the first part; and that he will not

obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,

Land Agent.

J. F. WILLCUTT,

Secretary.

GINBATISTA SURACO. (Seal.)

Schedule of prices at which the lands described in this contract have been sold this thirtieth (30th) day of March, 1885.

FRACTION.	SEC.	TP.	RANGE.	B & M	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
All.	29	4 N.	15 W.	S. B.	640.00	$2.50	$1060,

JEROME MADDEN, Land Agent.

(Endorsed as follows): Unpatented Lands. No. 4488. Contract for a Deed. Southern Pacific R. R. Company to Gianbtista Suraco. Dated March 30th, 1885. Interest, $89.60, due on the 30th day of March of each year. Remainder of principal, $1280.00 due on the 30th day of March, 1890.

JOSEPH WILLIAM FURNIVAN, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK—

Q. 1. What is your name? A. J. W. Furnivan.

Q. 2. Where were you born? A. I was born in Belgium.

Q. 3. Are you a citizen of the United States? A. Yes, sir.

Q. 4. Where were you naturalized? A. Naturalized by naturalization of father, coming here as a minor.

Q. 5. That is, before you were twenty-one? A. Yes, sir.

Q. 6. And you are one of the defendants in this action? A. Yes, sir.

Q. 7. Have you purchased any lands from the Southern Pacific Railroad Company involved in this action?

MR. CALL—Objected to as incompetent, immaterial, irrelevant, and not the best evidence.

A. I purchased from a party by the name of William H. Carlson.

Q. 8. By MR. TRASK—Was any contract of the Southern Pacific Railroad Company of this land to Carlson assigned to you?

MR. CALL—Same objections.

A. Yes, sir.

Q. 9. By MR. TRASK—Have you the contract and assignment with you?

MR. CALL—Same objections.

A. Yes, sir; I have.

Q. 10. By MR. TRASK—Witness shown contract, num-

bered 4102, for a deed, Southern Pacific Railroad Company to William H. Carlson, dated the 22nd day of November, 1884, for the following described land, situate in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of fractional of Section No. 19, Township 4 North, Range 15 West, S. B. M., containing six hundred and twenty-seven acres, signed by Jerome Madden, Land Agent, J. H. Willcutt, Secretary, and William H. Carlson, together with the assignment of said contract to said Joseph W. Furnivan, under date of the 19th day of November, 1886, signed and acknowledged by said William H. Carlson, attached to said contract. Is that the contract and assignment that you received?

MR. CALL—Same objections.

A. Yes, sir; but there is other parties got an interest in this section beside myself.

MR. TRASK—I now offer that contract in evidence.

MR. CALL—Same objections.

Document marked Defendant's Exhibit No. 118, before E. H. Lamme, Examiner.

Q. 11. By MR. TRASK—You state that other people have an interest in it?

MR. CALL—Same objections.

A. Yes, sir.

Q. 12. By MR. TRASK—What interest have you in this land?

MR. CALL—Same objections.

A. I own one-half of it.

Q. 13. By MR. TRASK—How much did you pay for this land?

MR. CALL—Same objections.

A. Of course, I assumed it under this contract. I have paid Wm. H. Carlson a bonus.

Q. 14. By MR. TRASK—Of how much?

MR. CALL—Same objections.

A. It cost me about seven dollars an acre from Carlson. And then there has been one-fifth paid to the Railroad Company, and I assumed the other two dollars which is owing to the Railroad Company.

Q. 15. By MR. TRASK—Approximately how much have you paid all told on this land?

MR. CALL—Same objections.

A. All I have paid to the Railroad Company is the interest.

Q. 16. By MR. TRASK—Yes, but including what you have paid to Carlson?

MR. CALL—Same objections.

A. That don't go to the Railroad. That was Carlson's individual profit.

Q. 17. By MR. TRASK—About seven dollars an acre, you say?

MR. CALL—Same objections.

A. That is what I paid to Carlson.

Q. 18. By MR. TRASK—Are you in possession of that portion which you own now?

MR. CALL—Same objections.

A. Yes, sir.

Q. 19. By MR. TRASK—About one-half?

MR. CALL—Same objections.

A. Yes, sir; west half.

Q. 20. By MR. TRASK—Have you made any improvements on it?

MR. CALL—Same objections.

A. Yes, sir; got orchard and one thing and another there. Of course, I assumed Carlson's place in the contract.

MR. TRASK—That is all.

Cross-examination.

By MR. CALL.

Q. 21. You say the remaining two dollars an acre has not been paid to the Railroad? A. No, sir.

Q. 22. Why hasn't that been paid? A. Well, the Railroad has never made a demand for it. They have received the interest, but they have never made demand for the principal.

Re-Direct Examination.

By MR. TRASK—

Q. 23. Have you purchased any other land from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir.

Q. 24. By MR. TRASK—Witness shown contract numbered 6009, for deed, Southern Pacific Railroad Company to Wm. H. Carlson, dated the first day of November, 1886, for the following described land, situate in the County of Los Angeles, State of California, known and designated on the public surveys of the United States as the North East Quarter of the North East Quarter, Lots One, Two, Three, Four, and Five, of Section 13, Township 4 North, Range 16 West, S. B. M., containing 164 acres, signed by Jerome Madden, Land Agent, J. H. Willcutt, Secretary,

and William H. Carlson, together with the endorsement on said contract from said Carlson to witness Joseph W. Furnivan, dated the 26th day of December, 1890, signed and acknowledged by said W. H. Carlson. Is this the contract and assignment you received representing your interest in the land therein described?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—I now offer this contract in evidence.

MR. CALL—Objected to as incompetent, immaterial, and irrelevant, and not the best evidence.

Document marked Defendant's Exhibit No. 119, before E. H. Lamme, Examiner.

Q. 25. By MR. TRASK—What portion of this land do you own?

MR. CALL—Same objections.

A. An undivided one-half interest.

Q. 26. By MR. TRASK—What did you pay for your interest in this land?

MR. CALL—Same objections.

A. I paid Mr. Carlson one hundred and eighty dollars.

Q. 27—By MR. TRASK—Have you paid the Railroad Company anything?

MR. CALL—Same objections.

A. I assumed all back interest, and everything that was owing to the Railroad Company. All except the principal; they never demanded that.

Q. 28. By MR. CALL—Who never demanded it? A. The Railroad Company.

Q. 29. By MR. TRASK—Is this property improved?

MR. CALL—Same objections.

A. No, sir; it is not.

Q. 30. By MR. TRASK—You are still in possession of it?

MR. CALL—Same objections.

A. Yes, sir; that is, I am not living on it.

Q. 31. Well, you are in possession of it?

MR. CALL—Same objections.

A. Yes, sir.

Q. 32. By MR. TRASK—You claim to be an innocent purchaser of this land for valuable consideration, do you, without any knowledge of the rights of the Government?

MR. CALL—Same objections.

A. That is, when I purchased it I thought I was purchasing a home.

Q. 33. By MR. TRASK—And you thought that when you made the payment to Mr. Carlson?

Mr. Call—Same objections.

A. Yes, sir.

Cross-Examination.

By MR. CALL—

Q. 34. What do you use this land for? A. Well, I raise grain on it. But part of it I have got fruit on now.

Q. 35. How much fruit? A. I have got thirty acres in fruit, and intend to put twenty more.

Q. 36. You bought the land at how much an acre from the Railroad originally? A. Mr. Carlson bought it at two and a half, and he paid one-fifth to the Railroad.

Q. 37. The other two dollars has not been paid yet?

A. No, sir.

Mr. Call—That is all.

The parties hereby waive the signature of the witness to his testimony.

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 4102. Land Department.

This agreement, made at San Francisco, California, this twenty-second (22) day of November, A. D. 1884, between the Southern Pacific Railroad Company, party of the first part, and William H. Carlson, of the County of Los Angeles, State of California, party of the second part,

Witnesseth, that the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of fractional of Section Nineteen (19), Township Four (4) North, Range Fifteen (15) West, San Bernardino Base and Meridian, containing six hundred and twenty-seven (627 00-100) 00-100 acres, for the sum of fifteen hundred and sixty-seven 50-100 ($1567 50-100) dollars, gold coin of the United States. And the party of the second part, in consideration of the premises, agreed to buy the land hereinbefore described, and to pay to the party of the first part the sum of $1,567 50-100 dollars, as follows, to wit: three hundred and thirteen 50-100 ($313 50-100) dollars and $87 78-100, one year's interest, in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract, and the remainder, to wit: the sum of twelve hun-

dred and fifty-four ($1,254 00–100) dollars, with interest thereon annually in advance at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the 22d day of November, 1889; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed that, upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives, or assigns, of all the agreements herein contained, thep arty of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all

branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, his heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed that, until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of remainder or interest, taxes or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take, and hold possession of the said premises with all the improvements thereon.

It is further agreed between the parties hereto that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to

obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the said tracts herein described, it will, upon demand, repay (without interest) to the party of the second part all moneys that may have been paid to it by him on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay, or impede the obtaining of patent for them by the party of the first part; and that he will not

obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed that this contract shall not be assignable, except by indorsement and with the written consent of thep arty of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent.

J. L. WILLCUTT,
Secretary.

WM. H. CARLSON. (Seal.)
(Seal.)

Schedule of prices at which the lands described in this contract have been sold this twenty-second (22d) day of November, 1884.

Fraction.	Sec.	Tp.	Range.	B & M	No. of Acres.	Rate per Acre.	Amount.
All of fract'nal	19	4 N.	15 W.	S. B.	627	$2.50	$1,567.50

JEROME MADDEN, Land Agent.

I, Wm. H. Carlson, the within named purchaser, for and in consideration of one ($1 00-100) dollars, to him in hand paid, do hereby sell, assign, and transfer all my right, title, interest, and claim in and to the within described tract or parcel of land, and the within contract, No. 4102, ur to Joseph W. Furnival the W. ½; C. C. Rising,

the N. E. ¼; and W. H. Carlson, the S. E. ¼; and to their heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignees.

Given under my hand and seal, this 28th day of October, A. D. 1886.

WM. H. CARLSON. (Seal.)

(Seal.)

State of California,
San Diego, County of San Diego.—ss.

On this sixth (6) day of November, in the year one thousand eight hundred and eighty-six, before me, Frank J. Higgins, a Notary Public in and for said County, personally appeared Wm. H. Carlson, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.) FRANK J. HIGGINS,
Notary Public.
.....18

In consideration of the above and foregoing assignment to us, we hereby agree with the said Wm. H. Carlson and with the Southern Pacific Railroad Company, that we will do and perform all the stipulations and conditions in the said contract No. 4102 required to be done and performed by the said Wm. H. Carlson.

CHAS. C. RISING, (Seal.)
By Robert A. Rising, his Attorney-in-fact.
WM. H. CARLSON. (Seal.)
.....18

The Southern Pacific Railroad Company hereby consents to the above assignment to J. W. Furnival the W. ½; to C. C. Rising, the N. E. ¼; and to Wm. H. Carlson, the S. E. ¼.

. . . . . .

. . . . . .

Purchaser named in WmHC

I, William H. Carlson, the assignee of S. P. R. R. Co.'s Contract No. 4,102 hereto attached, for and in consideration of $1 00-100 to him in hand paid, do hereby sell assign and transfer all my right, title, interest and claim, in and to said contract, and the tract or parcel of land therein described unto Joseph W. Furnival, and undivided one-half interest and to C. C. Rising, an undivided one-fourth interest WmHC and to William H. Carlson, an undivided one-fourth interest WmHC unto their heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed WmHC by said last-named assignees.

Given under my hand and seal this 19th day of November, A. D. 1886.

WM. H. CARLSON. (Seal.)

(Seal.)

State of California,

San Diego, County of San Diego.—ss.

On this 19th day of November, in the year one thousand eight hundred and eighty-six, before me, Frank J. Higgins, a Notary Public in and for said County, personally appeared William H. Carlson, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.) FRANK J. HIGGINS,
Notary Public.

On this 19th day of November, 1886, in consideration of the above and foregoing assignment to J. W. Furnival, he hereby agrees with the said William H. Carlson and with the Southern Pacific Railroad Company that he will do and perform all the stipulations and conditions in the said contract required to be done and performed by the said W. H. Carlson.

WM. H. CARLSON, (Seal.)
P. O. Address, San Diego, Cal.
JOS. W. FURNIVAL, (Seal.)
P. O. Address, Thompson P. O., Los Angeles County, Cal.

(Endorsed): Dfts. Ex. 118. Unpatented Lands. No. 4102. Contract for a deed. Southern Pacific R. R. Company to Wm. H. Carlson. Interest $87 78-100, due on the 22nd day of Nov. of each year. Remainder of principal, $1254 00-100, due on the 22nd day of November, 1889.

Recorded at request of Wells, Fargo & Co., Feby. 6, 1885, at 20 min. past 10 a. m., in book 6, Miscellaneous Records, page 184, Records Los Angeles County, Chas. E. Miles, County Recorder, by W. B. Pritchard. 3.30 due. 13.

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 6009. Land Department.

This agreement, made at San Francisco, California, this first (1st) day of November, A. D. 1886, between the

Southern Pacific Railroad Company, party of the first part, and William H. Carlson, of the County of San Diego, State of California, party of the second part,

Witnesseth, that the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part, the following tracts of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the North East Quarter of North East Quarter (N. E. ¼ of N. E. ¼) and Lots one, two, three, four, and five (1, 2, 3, 4, and 5) of Section Thirteen (13), Township Four (4) North, Range Sixteen (16) West, San Bernardino Base and Meridian, containing one hundred and sixty (160.64) 64-100 acres, for the sum of two hundred ($200.81) 81-100 dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of two hundred ($200.81) 81-100 dollars, as follows, to wit: Forty ($40.16) 16-100 dollars, and $11.24, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract (which two last-mentioned sums have this day been fully paid), and the remainder, to wit: the sum of one hundred and sixty ($160.65) 65-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its offices in the City and County of San Francisco, on or before the

first (1st) day of November, 1891; and also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed that upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed that, until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take, and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take, and hold possession of the said premises with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part as per schedule on page 3 hereof; that said lands being unpatented,

the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed that this contract shall not be assignable, except by indorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof the party of the first part has caused these presents to be signed in duplicate by its

Secretary and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent.

J. L. WILLCUTT,
Secretary.

WM. H. CARLSON. (Seal.)
(Seal.)

Schedule of prices at which the lands described in this contract have been sold this first (1st) day of November, 1886.

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
N. E. ¼ of N. E. ¼ and lots 1, 2, 3, 4 and 5.	13	4 N.	16 W.	S. B.	160.64	$1.25	$200.81

JEROME MADDEN, Land Agent.

I, Wm. H. Carlson, the within-named purchaser, for and in consideration of eighty ($80 00-100) dollars to him in hand paid, do hereby sell, assign and transfer all my right, title, interest, and claim in and to the within described tract or parcel of land, and the within contract No. 6009 unto Jos. Wm. Furnivall and Wm. H. Carlson, their heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under my hand and seal this 26th day of December, A. D. 1890.

WM. H. CARLSON, (Seal.)
B. & Cin. (Seal.)

State of California,

....., County of San Diego.—ss.

On this 26th day of December, in the year one thousand eight hundred and ninety, before me, R. H. Dalton, a Notary Public in and for said county, personally appeared Wm. H. Carlson, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.) R. H. DALTON, Notary Public.

San Diego, Cal., December 26th, 1890.

In consideration of the above and foregoing assignment to ourselves, we hereby agree with the said Wm. H. Carlson, and with the Southern Pacific Railroad Company, that we will do and perform all the stipulations and conditions in the said contract No. 6009 required to be done and performed by the said Wm. H. Carlson.

JOSEPH WM. FURNIVAL, (Seal.)

Thompson, Los Angeles Co., Cal.

WM. H. CARLSON, (Seal.)

San Diego, Cal.

San Francisco, Cala., January 3d, 1891.

The Southern Pacific Railroad Company hereby consents to the above assignment to Joseph Wm. Furnival and Wm. H. Carlson.

SOUTHERN PACIFIC RAILROAD COMP'Y.

By JEROME MADDEN, Its Land Agent.

(Endorsed): Defts. Ex. 119. Unpatented Lands. No. 6009. Contract for a Deed. Southern Pacific R. R. Com-

pany to William H. Carlson. Dated, Nov. 1st, 1886. Interest $11.24, due on the first (1st) day of November of each year. Remainder of principal, $160.65, due on the first (1st) day of November, 1891.

U. S. Cir. Court, Southern District California. U. S. of A. vs. S. P. R. R. Co. et als., 184. Master's and Examiner's Exhibit No. 119. E. H. Lamme, Master and Examiner in Chancery, for defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

T. F. MITCHELL, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK—

Q. 1. What is your name? A. T. F. Mitchell.

Q. 2. Where do you reside. A. I reside at Humphrey Station, in this county.

Q. 3. Where were you born? A. In Tennessee.

Q. 4. Are you one of the defendants in this case?

A. Yes, sir.

Q. 5. Have you purchased any land involved in this action from the Southern Pacific Railroad Company?

MR. CALL—Objected to as incompetent, immaterial, and irrelevant, and not the best evidence.

A. Yes, sir.

Q. 6. By MR. TRASK—Is that purchase represented by deed or contract?

MR. CALL—Same objections.

A. This is a little different from the others. It is a sort of a forced arrangement. I guess I had better state a litle about it.

Q. 7. By MR. TRASK—Well, state it—short.

MR. CALL—Same objections.

A. Twenty-eight years ago I settled on Section Twenty-three, Township Four, Range Fifteen West, and I paid taxes and farmed it ever since. Eight or ten years after that the land was surveyed. Well, before that I just got a surveyor and had it surveyed out, and filed it in the Clerk's office. There was no Land Office then. So, when the land come into market, I lacked a day of getting in; there was eighty or ninety days—I was one day short of getting in, so I could not file. So I went to work then and worked two or three years with the Railroad Company, and sued in the Interior, and worked and worried around, and at last, though, I got everything through and got my patent. I had had my patent four years, and after I had my patent they brought suit again.

Q. 8. By MR. CALL—Who did? A. The Railroad Company. So they had to keep me poor as a church-mouse. So the lawyers kept me so devilish poor they wouldn't compromise or nothing; they sued me in the Interior, and in San Francisco, and every other place. So, at last, the lawyers was eating me up; could not get no compromise; and so at last they got through with what they wanted, the land and all, and at last they come to the conclusion I had been pretty generous with them.

Q. 9. By MR. TRASK—This really don't cut any figure in this case. What I want to know is if you have got any contract or a deed.

MR. CALL—Same objections.

A. Yes, I have got it, and my patent, and everything

else. And then I bought it from them afterwards, and paid them for it.

Q. 10. By MR. TRASK—Quit-claim deed No. 3894, Southern Pacific Railroad Company, D. O. Mills, and Gerrit L. Lansing, trustees, to Thomas F. Mitchell, dated September 4, 1884, for the following described lands, situate in the County of Los Angeles, and State of California, to wit: West half of Northwest quarter, Southeast quarter of the Northwest quarter, Northwest quarter of the Southwest quarter, Section Twenty-three, Township Four North, Range Fifteen West, S. B. M., containing one hundred and sixty acres, executed by the Southern Pacific Railroad Company, D. O. Mills, and Gerrit L. Lansing, trustees, duly acknowledged, shown to witness. Is that the deed that you received from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir.

Q. 11. By MR. TRASK—How much did you pay them?

MR. CALL—Same objections.

A. I paid them two hundred and three dollars.

Q. 12. By MR. TRASK—For the land described in this deed?

MR. CALL—Same objections.

A. Yes, sir; I paid them two hundred for the land, and three for the deed.

Q. 13. By MR. TRASK—Have you paid the taxes on this land since then?

MR. CALL—Same objections.

A. Yes, sir; I have.

Q. 14. By MR. TRASK—Have you been in possession of the land?

MR. CALL—Same objections.

A. I have; and cultivated it ever since.

Q. 15. By MR. TRASK—Living on it?

MR. CALL—Same objections.

A. And living on it, yes, sir; living on it now.

MR. TRASK—I offer this deed in evidence.

MR. CALL—Same objections.

Deed marked Defendant's Exhibit No. 120, before E. H. Lamme, Examiner.

Cross-Examination.

By Mr. Call—

Q. 16. This is one hundred and sixty acres, isn't it?

A. Yes, sir. And more than that, I have had a release. They released it—they wanted to get their—they wanted sort of hush-money, and wanted land in lieu of it, and I was not to say nothing and they would give me a release, and the release went on to Washington with the other papers. I didn't file no complaint. I was to say nothing. So when that release was handed up and they brought it in San Francisco was the reason they compromised, else they would have been lawing me yet.

Q. 17. Did they give you a deed for this? A. Yes, sir.

Q. 18. This is the deed? A. Yes, sir; that is the deed. And this other is my patent.

Q. 19. You entered this land as a homestead? A. I entered that land as a homestead, and there I lost my homestead and my pre-emption.

Q. 20. Wait. You entered this land as a homestead before you bought it from the Railroad Company? A. Yes, sir.

Q. 21. Had a patent for it? A. Yes, sir.

Q. 22. Well, is this the patent that you received?

A. Yes, sir. And we made a compromise. They said if I would pay them for it, after I had my patent—I had my patent four years before I paid them that thing; but just to quit lawing me—I gave them the money to quit lawing me.

MR. CALL—You admit that the patent was made to the witness before the suit was brought?

MR. TRASK—I would not want to make any admissions about it.

THE WITNESS—Then I bought it just to get them to quit lawing me.

Q. 23. By MR. CALL—Have you read your answer filed in this case?

MR. TRASK—Objected to on the ground it is incompetent, irrelevant, and immaterial.

A. No, sir; I have not read it.

Q. 24. By MR. CALL—Do you claim to own this land under this patent from the United States? A. I do; under that patent, and I didn't want that railroad arrangement. I told them to keep the three dollars; that I didn't want it. I would not give them a cent for it. Just forced it onto me, to buy off the quit-claim.

A. 25. Well, I ask you to produce your patent from the United States to the land, in order that it may be offered in evidence. A. Well, I have got it right here.

Q. 26. Is this the patent? A. This is the patent.

That is the very patent for this land, the one hundred and sixty acres.

MR. CALL—I offer in evidence patent from the United States to Thomas F. Mitchell, dated February 10, 1883, to the land mentioned, and ask that it be marked Standing Master and Examiner's Exhibit No. 121.

MR. TRASK—Objected to as incompetent, irrelevant, and immaterial.

Re-Direct Examination.

By MR. TRASK—

Q. 27. Have you purchased any other land from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. That land; yes, sir.

Q. 28. By MR. TRASK—Witness shown contract for deed, No. 4452, Southern Pacific Railroad Company to Thomas F. Mitchell, dated March 18, 1885, for the following described land, situate in the County of Los Angeles, State of California, known and designated on the public surveys of the United States as the fractional East half of Section 3, Township 4 North, Range 14 West, S. B. M., containing three hundred and twenty-two acres, executed in behalf of the Southern Pacific Railroad Company by Jerome Madden, Land Agent, J. H. Willcutt, Secretary, signed by Thomas F. Mitchell. Is that the contract that you received from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—I now offer that contract in evidence.

MR. CALL—Same objections.

Contract marked Defendant's Exhibit No. 122, before E. H. Lamme, Examiner.

Q. 29. By MR. TRASK—How much did you pay for this land?

MR. CALL—The same objections.

A. It was $550 for the three hundred and twenty-two acres.

Q. 30. By MR. TRASK—Have you paid the $550?

MR. CALL—The same objections.

A. I have paid every cent of it.

Q. 31. By MR. TRASK—So you don't owe the Railroad Company any of it?

MR. CALL—The same objections.

A. Nary cent in the world.

Q. 32. By MR. TRASK—Are you in possession of this land now?

MR. CALL—Same objections.

A. I am.

Q. 33. By MR. TRASK—You purchased it from the Railroad Company without any notice or knowledge of the rights of the Government of the United States in and to it?

MR. CALL—Same objections.

A. Yes, sir.

Q. 33½. By MR. TRASK—And you claim to be a bona fide purchaser of it now?

MR. CALL—Same objections.

A. Yes, sir.

Q. 34. By MR. TRASK—You have paid all of the taxes on it?

MR. CALL—Same objections.

A. There is the receipts in there; yes, sir, paid everything.

Q. 35. By MR. CALL—Did you ever get a deed for that land from the Railroad? A. I got something or other. I got that from them; got the contract.

Q. 36. You never got the deed? A. No; I never got no deed from them. That is the contract.

Q. 37. By MR. TRASK—Do you claim any other land involved in this action? A. No, sir; only I claim there is some Government land of Chrisco.

Q. 38. Give us the description of this Chrisco land in which you claim an interest.

MR. CALL—Same objections.

A. Let's see. I have not got much papers to tell by.

Q. 39. By MR. TRASK—Did Chrisco purchase the land from the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. No, sir; it was a homestead. There is forty acres was railroad land. The man that settled on it died and willed it to me. He settled on it before it was given to the Railroad.

MR. TRASK—That is all.

Re-Cross-Examination.

By MR. CALL—

Q. 40. What is this piece of land that you claim to own? What is the description of it? (Witness produces papers.) What is this? This land here is described as the North half of the Northwest quarter of Section Twenty-one, Township Five North, Range Fourteen West, S. B. M.

A. Yes, sir.

Q. 41. You say this land was entered as a homestead?

MR. TRASK—Objected to as incompetent, irrelevant, and immaterial, and not the best evidence.

A. Yes, sir.

Q. 42. By MR. CALL—When was it entered?

MR. TRASK—Same objection.

A. It was entered, I think, about ten years ago, but the man had been living on it for twenty years.

Q. 43. By MR. CALL—Prior to that time?

MR. TRASK—Same objections.

A. No; about fifteen years prior to that. He was living on it about twenty years.

Q. 44. By MR. CALL—When did he first get onto it?

MR. TRASK—Same objections.

A. He went onto it about 1870.

Q. 45. By MR. CALL—It was unsurveyed land at that time, was it not?

MR. TRASK—Same objections.

A. Yes, sir.

Q. 46. By MR. CALL—And did he go onto it claiming it as a homestead?

MR. TRASK—Same objections.

A. Yes, sir.

Q. 47. By MR. CALL—How long did he live on it?

MR. TRASK—Same objections.

A. He lived on it about twenty years.

Q. By MR. CALL—Continuously?

Mr. Trask—Same objection.

A. Oh, no; he lived on it about fifteen years continually; farmed it; ranched it.

Q. 49. By MR. CALL—Subsequent to 1870?

MR. TRASK—Same objections.

A. Yes, sir; no, back of—yes.

Q. 50. By MR. CALL—Since 1870?

MR. TRASK—Same objections.

A. Since 1870.

Q. 51. By MR. CALL—Who was it that lived on it, and claimed it as a homestead?

MR. TRASK—Same objections.

A. Noah Chrisco.

Q. 52. By MR. CALL—Did he claim it as Government land?

MR. TRASK—Same objections.

A. Claimed it as Government land.

Q. 53. By MR. CALL—When was the land surveyed by the United States?

MR. TRASK—Objected to on the same grounds.

A. That I could not tell. But it was after 1876. It must have been about 1878; somewhere along there. I am not certain.

Q. 54. By MR. CALL—In the year 1878?

MR. TRASK—Same objections.

A. About 1878, I think. I am not positive about that. It was about that time.

MR. CALL—That is all.

SOUTHERN PACIFIC RAILROAD COMPANY.

No. 4452. Land Department.

This agreement, made at San Francisco, California, this eighteenth (18th) day of March, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and Thomas F. Mitchell, of the County of Los Angeles, State of California, party of the second part.

Witnesseth, that the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and know nand designated on the public surveys of the United States as the fractional East half (Frac'l E. ½) of Section Three (3), Township Four (4) North, Range Fourteen (14) West, San Bernardino Base and Meridian, containing three hundred and twenty-two (322 95-100) 95-100 acres, for the sum of five hundred and fifty ($550 00-100) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of five hundred and fifty ($550 00-100) dollars, as follows, to wit: Two hundred and twenty-five ($225 00-100) dollars, and $22 75-100, one year's interest, in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract, and the remainder, to wit: the sum of three hundred and twenty-five ($325 00-100) dollars, with interest thereon, annually in advance at the rate of seven per cent. per annum, both in United States gold coin of the present standard of value, at its office in the City and County of San Francisco, on or before the eighteenth (18) day of March, 1890; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become

due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that, upon the punctual payment of said purchase money, interest, taxes, and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed that, until the full payment of said purchase money, interest, taxes, and asssessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed that the party of the second part may at once enter upon, take, and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of re-

mainder or interest, taxes or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises with all the improvements thereon.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to obtain patents for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that, in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by him on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acree fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed that if the party of the first part

shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed that this contract shall not be assignable, except by indorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent.

J. L. WILLCUTT,
Secretary.

THOMAS F. MITCHELL. (Seal.)
(Seal.)

Schedule of prices at which the lands described in this contract have been sold this eighteenth (18th) day of March, 1885.

FRACTION.	SEC.	TP.	RANGE.	B & M	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
Frac'l E. ½	3	4 N.	14 W.	S. B.	322.95	$1.70	$555.00

JEROME MADDEN, Land Agent.

RAMON PAREA, called for defendant, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK.—

Q.—1. What is your name? A. Ramon Parea.

Q.—2. Where were you born?

A. In Newhall, California.

Q.—3. By MR. CALL. Where did your father live?

A. In Mexico.

Q.—4. By MR. TRASK. Are you naturalized?

A. H'm?

Q.—5. Are you a citizen of the United States?

A. I come twelve years old here.

Q.—6. Are you a voter? A. Yes.

Q.—7. You are one of the defendants in this action?

A. No.

Q.—8. Have you bought any land from the Southern Pacific Railroad Company?

MR. CALL.—Objected to as incompetent, immaterial and irrelevant, and not the best evidence.

A. Yes.

Q.—9. By MR. TRASK. What land was it?

MR. CALL. Same objections.

A. Railroad land.

Q.—10. By MR. TRASK. Have you got a contract from the railroad company?

MR. CALL. Same objections.

A. Yes.

Q.—11. By MR. TRASK. Will you produce that contract and send it to Judge Lamme?

MR. CALL. Same objections.

A. Yes.

MR. TRASK. Mr. Call, will you stipulate that this contract, when sent, may be introduced in evidence and have the same effect as though introduced at this time, subject to your objections?

MR. CALL. The contract may be filed within the next ten days, with the same effect as if now offered, subject to all objections as to its competency, materiality and relevancy.

Said document to be marked Defendants' Exhibit, No. 125, before E. H. Lamme, Examiner.

Q.—12. By MR. TRASK. Have you paid the taxes on this land since you purchased it?

MR. CALL. Same objections.

A. All the time.

Q.—13. By MR. TRASK. You are in possession of the land now?

MR. CALL. Same objections.

A. Yes.

MR. TRASK. That is all.

MR. CALL. That is all.

Adjourned to December 30, 1893, at 10 A. M.

Southern Pacific Railroad Company.—Land Department.

No. 5738.

This agreement, made at San Francisco, California, this first (1st) day of July, A. D. 1886, between the Southern Pacific Railroad Company, party of the first part, and Ramon Perea, of the County of Los Angeles, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tract of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of section twenty-seven (27), township five (5) north, range sixteen (16) west, San Bernardino base and meridian, containing six hundred and forty (640.00) 00-100 acres, for the sum of sixteen hundred 00-100 ($1600.00) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of sixteen hundred 00-100 ($1600.00) dollars, as follows, to wit: Three hundred and twenty 00-100 ($320.00) dollars, and $89.60, one year's interest in advance on the remainder, in United States gold coin of the present standard of value, on the execution of this contract, (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of twelve hundred and eighty 00-100 ($1280.00) dollars, with interest thereon, annually in advance, at the rate of seven per cent per annum, both in United States gold coin

of the present standard of value, at its office in the city and County of San Francisco, on or before the first (1st) day of July, 1891; and also to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof, and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same, and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder, and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed, that until the full payment of said purchase money, interest, taxes, and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said

land, without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises with all the improvements thereon.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to obtain patent for land that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by him on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof;

that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by indorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent.

FRED'K MADGE, Secretary Pro Tem.

His
RAMON X PEREA. [Seal.]
Mark.

CH. HEDEMARK, Witness. [Seal.]

Schedule of prices at which the lands described in this contract have been sold this first (1st) day of July, 1886.

FRACTION.	SEC.	TP.	RANGE.	B & M.	NO. OF ACRES.	RATE PER ACRE.	AMOUNT.
All	27	5 N	16 W	S B	640.00	$2.50	$1600.00

JEROME MADDEN,
Land Agent.

Ramon Perea the within-named purchaser, for and in consideration of five dollars, to him in hand paid, does hereby sell, assign and transfer all his right, title, interest and claim in and to the within-described tract or parcel of of land, and the within contract, No. 5738, unto Enrique R. Ruiz, heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under my hand and seal, this fourth day of August, A. D., 1893.

His
RAMON X PEREA. [Seal.]
Mark.

Witness to signature of Ramon Perea.

WM. N. FORKER. [Seal.]

State of California,

County of Los Angeles,—ss.

On this fourth day of August, in the year one thousand eight hundred and ninety-three before me, Wm. N. Forker,

a Notary Public in and for said County, personally appeared Ramon Perea, known to me to be the person whose name is subscribed to the above insrtument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

WM. N. FORKER.

Notary Public in and for the County of Los Angeles, State of California.

Aug. 19, 1893,.....18

In consideration of the above and foregoing assignment to me, I hereby agree with the said Ramon Perea and with the Southern Pacific Railroad Company, that I will do and perform all the stipulations and conditions in the said contract, No. 5738, required to be done and performed by the said Ramon Perea.

ENRIQUE R. RUIZ. [Seal.]

P. O. Adress, Newhall, Cal.

San Francisco, Cal., August 21st, 1893.

The Southern Pacific Railroad Company hereby consents to the above assignment to Enrique R. Ruiz.

JEROME MADDEN,
As Land Agent, S. P. R. R. Co.

[Endorsed]: Ret. 116 W. 1st A. Vignedas. Unpatented Lands, No. 5738. Contract for a deed, Southern Pacific R. R. Company to Ramon Perea, dated July 1st, 1886. Interest, $89.60 due on the first day of July of each year. Remainder of principal, $1280.00, due on the first (1st) day of July, 1891. U. S. Cir. Court, Southern District, Cali-

fornia, U. S. of A. vs. S. P. R. R. Co. et als. 184 Master's and Examiner's Exhibit, No. 125, E. H. Lamme, Master and Examiner in Chancery. for defendants. Filed Feb. 23, 1894, Wm. M. Van Dyke, Clerk.

The parties hereby waive the signature of the witness to his testimony.

D. M. SUTHERLAND, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK.

Q. 1. What is your name? A. D. M. Sutherland.

Q. 2. Where were you born?

A. In Canada; Nova Scotia.

Q. 3. Are you a citizen of the United States?

A. I am.

Q. 4. Where were you naturalized?

A. In Astoria, Oregon.

Q. 5. I don't suppose you have your papers with you?

A. No sir.

Q. 6. You are one of the defendants in this action?

A. Now, I don't know anything about the action, you know.

Q. 7. By MR. CALL. Are you a voter? Do you vote?

A. Yes sir.

Q. 8. By MR. TRASK. Have you purchased any lands from the Southern Pacific Railroad Company?

MR. CALL. Objected to as incompetent, immaterial, and irrelevant and not the best evidence.

A. Yes sir.

Q. 9. By MR. TRASK. Is that purchase evidenced by contract or deed?

MR. CALL. Same objections.

A. Yes sir, by contract and deed.

Q. 10. By MR. TRASK. This is the deed?

MR. CALL. Same objections.

A. Yes sir.

Q. 11. By MR. TRASK. Witness shown deed No. 7873, Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, Trustees, to D. M. Sutherland, dated July 19, 1893,)—Is that the deed which you received from the Southern Pacific Railroad Company?

MR. CALL. Same objections.

A. Yes sir.

MR. TRASK. I offer the deed in evidence.

MR. CALL. Same objections.

Deed marked, Defendants' Exhibit, No. 131, before E. H. Lamme, Examiner.

Q. 12. By MR. TRASK. When did you purchase that land from the Southern Pacific Railroad Company?

MR. CALL. Same objections.

A. (Witness referring to contract.) July 28, 1887.

Q. 13. By MR. TRASK. How much did you pay for that land?

MR. CALL. Same objections.

A. I was to pay two dollars and a half an acre.

Q. 14. By MR. TRASK. How much did you pay down for it when you purchased it?

MR. CALL. Same objections.

A. Fifty cents an acre.

Q. 15. By MR. TRASK. You have paid for all of it since then?

MR. CALL. Same objections.

A. There is two separate documents here, and one I have paid for and the other I have not paid on.

Q. 16. By MR. TRASK. Well, the land I am inquiring about is the land described in the deed?

MR. CALL. Same objections.

A. Yes, sir. Well, that is a different date, perhaps.

Q. 17. By MR. TRASK. Did you first have a contract on that?

MR. CALL. Same objections.

A. Yes sir.

Q. 18. By MR. TRASK. For the land described in the deed?

MR. CALL. Same objections.

A. Yes sir.

Q. 19. By MR. TRASK. About what date was that?

MR. CALL. Same objections.

A. About the same time.

Q. 20. By MR. TRASK. About the same date of this contract?

MR. CALL. Same objections.

A. Yes sir.

Q. 21. By MR. CALL. July 28, 1887?

A. Very nearly the time.

Q. 22. By MR. TRASK. Are you in possession of the land described in this deed?

MR. CALL. Same objections.

A. Do you mean do I live on it?

Q. 23. By MR. TRASK. No, it is not necessary that you live on it. Are you farming it?

MR. CALL. Same objections.

A. No; I am not farming it.

Q. 24. By MR. TRASK. You own it yet?

MR. CALL. Same objections.

A. Yes sir.

Q. 25. By MR. TRASK. At the time you purchased it did not have any notice or knowledge of any claim in behalf of the Government of the United States to this land?

MR. CALL. Same objections.

A. No sir.

Q. 26. By MR. TRASK. You supposed the Railroad Company had the right to convey it to you?

MR. CALL. Same objections.

A. Yes sir.

Q. 27. By MR. TRASK. And in making your payments you have acted on that supposition?

MR. CALL. Same objections.

A. Yes sir.

Q. 28. By MR. TRASK. You have paid all taxes that have been assessed against it?

MR. CALL. Same objections.

A. Yes sir.

Q. 29. By MR. TRASK. You say you have also purchased some land from them and that that purchase is evidenced by contract for a deed?

MR. CALL. Same objections.

A. Yes sir.

Q. 30. By MR. TRASK. (Witness shown contract No.

7875 for deed Southern Pacific Railroad Company to D. M. Sutherland, dated July 28, 1887.) I will ask you if that is the contract which you received?

MR. CALL. Same objections.

A. Yes sir.

Q. 31. By MR. TRASK. For the purchase of the land therein described?

MR. CALL. Same objections.

A. Yes sir.

MR. TRASK. I offer that contract in evidence and ask that it be marked Defendants' Exhibit, No. 132, before E. H. Lamme, Examnier.

MR. CALL. Same objections.

Q. 32. By MR. TRASK. How much did you agree to pay for the land described in that contract?

MR. CALL. Same objections.

A. Two dollars and a half an acre.

Q. 33. By MR. TRASK. How much have you paid of that, approximately?

MR. CALL. Same objections.

A. I have paid on that about eighty-four cents an acre.

Q. 34. By MR. TRASK. Have you paid all the taxes that have been assessed against it since then?

MR. CALL. Same objections.

A. All except this year's.

Q. 34. By MR. TRASK. You have also paid the interest upon the payments called for to the Southern Pacific Railroad Company?

MR. CALL. Same objections.

A. Except this present year.

Q. 35. By MR. TRASK. Have you made any improvements on the land described in this contract?

MR. CALL. Same objections.

A. No.

Q. 36. By MR. TRASK. You purchased it on the date it bears date?

MR. CALL. Same objections.

A. Yes sir.

Q. 37. By MR. TRASK. And without any notice of the claim of the Government of the United States?

MR. CALL. Same objections.

A. That is right. Yes sir.

MR. TRASK. That is all.

Cross Examination.

By MR. CALL.

Q. 38. You say you bought this land mentioned in the contract for two and a half and acre? A. Yes sir.

Q. 39. And you have paid on that, eighty-seven cents?

A. Eighty-three, I think; about eighty-three or eighty-four.

Q. 40. The balance remains unpaid?

A. Yes sir.

MR. CALL. That is all.

G. 84 (11-28-92-500).

Deed No. 7873. To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills, and Gerritt L. Lansing, Trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California,

which remained unsold on the first day of April, A. D., 1875, send greeting:

Whereas, on the first day of April, A. D., 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G: Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B. to F., both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Com-

pany may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them, jointly by leter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated and that all deeds made in their name by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, thier true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company contracted to sell the lands hereinafter described, pursuant to the foregoing conditions, to D. M. Sutherland, of the County of Los Angeles, State of California, for the sum of two hundred 00-100 ($200.00) dollars, which sum has been fully paid to said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now therefore, in consideration of the premises, and the said sum of two hundred 00-100 ($200.00) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell, and convey to the said D. M. Sutherland, and to his

heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to wit;

The west half of northeast quarter (W. ½ of N. E. ¼) of section No. twenty-nine (29), in township five (5) north, of range ten (10) west, San Bernardino base and meridian, containing eighty (80) acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since July 28th, 1887, the said purchaser having heretofore agreed with said Company to pay the same, and also reserving all claim of the United States to said tract as mineral lands.

To have and to hold, the aforesaid premises, to the said D. M. Sutherland, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company, has caused these presents to be signed by its president and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this *nineteenth* day of *July*, A. D., 1893.

[Seal.]

CHAS. F. CROCKER,
Pres. S. P. R. R. Co.

J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS. [Seal.]

GERRIT L. LANSING. [Seal.]

Trustees.

By JEROME MADDEN, their joint attorney-in-fact.

State of California,

City and County of San Francisco,—ss.

On this *nineteenth* day of *July*, in the year one thousand eight hundred and *ninety-three*, before me, *E. B. Ryan*, a Notary Public in and for the said City and County of San Francisco, State of California, personally appeared *Charles F. Crocker*, known to me to be the President, and *J. L. Willcutt*, known to me to be the Secretary of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Seal.] E. B. RYAN.

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: 107 N. Spring St., 19. Deed No. 7873, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to D. M. Sutherland. Deed, dated July 19th, 1893. Recorded at request of Grantee, Sept. 1, 1893, at 40 min. past 2 P. M., in book 342, page 95, of deeds, Los Angeles County Records, Arthur Bray, County Recorder,

By A. P. Church, Deputy. E. 2.50-16. 45. U. S. Cir. Court, Southern District California, U. S. of A., *vs.* S. P. R. R. Co., et als., 184 Master's and Examnier's Exhibit, No. 131, E. H. Lamme, Master and Examiner in Chancery. for defendant. Filed Feb. 23, 1894, Wm. M. Van Dyke, Clerk.

G. 326. (6-29-87-1000.)

Southern Pacific Railroad Company,—Land Department.

No. 7875.

Article of agreement, made at San Francisco, California, this twenty-eighth (28th) day of July, A. D., 1887, between the Southern Pacific Railroad Company, party of the first part, and D. M. Sutherland, of Los Angeles County, State of California, party of the second part.

The said party of the first part, in consideration of the agreements of the said party of the second part herein contained, hereby agrees to sell unto the said party of the second part, the following tract of land, situate in the County of Los Angeles, State of California, to wit: and known and designated on the public surveys of the United States as the southeast quarter (S. E. ¼) of section No. twenty-seven (27) in township five (5) north, of range nine (9) west, San Bernardino base and meridian, containing one hundred and sixty (160 00-100) 00-100 acres, for the sum of four hundred ($400.00) 00-100 dollars, United States gold coin, of which sum the said party of the second part has this day paid the sum of eighty ($80.00) 00-100 dollars, with twenty-two ($22.40) 40-100 dollars, one year's interest on the remainder of said purchase money; the remainder of said principal sum amounting to three hundred

and twenty ($320.00) 00-100 dollars, United States gold coin, with interest thereon annually in advance, at the rate of seven per cent. per annum, to be paid by the said party of the second part on or before the twenty-eighth (28th) day of July, 1892.

And the said party of the first part hereby further agrees that upon the punctual payment of said purchase money and interest, and the strict and faithful performance, by the said party of the second part, his legal representatives or assigns, of all the agreements herein contained, then the said party of the first part will cause to be made and executed to the said party of the second part, his heirs and assigns, upon request and surrender of this contract, a deed of grant, bargain, and sale, for the conveyance of said premises, reserving all claim of the United Staes to the same as mineral land.

And the said party of the second part hereby agrees to pay to the said Southern Pacific Railroad Company, its successors or assigns, the said sum of three hundred and twenty ($320.00) 00-100 dollars, United States gold coin of the present standard of value, with interest thereon, annually in advance, at the rate of seven per cent. per annum, at its office in the City of San Francisco, on or before the 28th day of July, 1892, both principal and interest payable in United States gold coin of the present standard of value, and until the full payment of said purchase money and interest, will permit no strip or waste to be made on said premises, and no wood or growing trees to be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences, without the previous written consent

of the said party of the first part. And if the said party of the second part shall fail to make punctually any of said payments of interest or principal, or shall fail to comply strictly with any of the stipulations of this contract, then the said party of the first part, its successors or assigns, shall have the right to enter upon and take possession of the said premises, with all the improvements thereon.

It is further mutually agreed and understood, that the said party of the second part shall have the immediate possession and enjoyment of said premises, and, if the same be in the adverse possession of a third party, the right to use at his own cost and charge the name of the party of the first part to recover the same by action. And that in consideration of such possession and enjoyment, he will pay all taxes and assessments that may be, at any time, imposed upon said premises. And it is further agreed that, should said party of the second part fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, the said party of the first part may pay the same, and add the amount thereof to the price for said premises, and such taxes or assessments with intertst at the rate of seven per cent. per annum shall be paid before said party of the second part shall be entitled to a conveyance of said premises.

The party of the second part hereby agrees to pay $3.00 for expenses of the acknowledgments to the deed that shall b issued on this contract.

This contract shall not be assignable, except upon the consent of said party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the said party of the second part as above set forth.

In testimony whereof, the said party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the said party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent.
J. L. WILLCUTT,
Secretary.
D. M. SUTHERLAND. [Seal.]

D. M. Sutherland, the party of the second part in the within contract, No. 7875, for and in consideration of five hundred dollars, to him in hand paid does hereby sell, assign and transfer all his right, title, interest and claim in and to the within described tract or parcel of land, and the within contract, No. 7875, unto Robert Sutherland, his heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under my hand and seal, this 4th day of Jan'y, A. D., 1888.

D. M. SUTHERLAND. [Seal.]

Br. J. C., G. T. F.

State of California,

.....County of .....,—ss.

On this.....day of.....in the year one thousand eight hundred and....., before me..... ....., a..... in and for said County, personally appeared.....known to me to be the person whose name....subscribed to the above instrument, and acknowledged to me that.....executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

.....

Notary Public.

On this 4th day of Jan'y, 1888, in consideration of the above and foregoing assignment to me, I hereby agree with the assignor therein named and with the Southern Pacific Railroad Company, to do and perform all the stipulations and conditions in the within contract, required to be done and performed by the party thereto of the the second part.

R. SUTHERLAND. [Seal.]

P. O. Address.....

San Francisco, Cal.,.....18....

The Southern Pacific Railroad Company hereby consents to the above assignment to.....

.....

By.....

Its Land Agent.

[Endorsed]: No. 7875. Contract for a deed, Southern Pacific R. R. Company to D. M. Sutherland, dated July 28th, 1887. Interest $22.40 due on the 28th day of July of each year. Remainder of principal, $320.00 due on the 28th day of July 1892. U. S. Cir. Court, Southern District California, U. S. of A., *vs.* S. P. R. R. Co., et als. 184 Master's and Examiner's Exhibit, No. 132, E. H. Lamme, Master and Examiner in Chancery, for defendant. Filed Feb. 23, 1894, Wm. M. Van Dyke, Clerk.

TESTIMONY OF CLARENCE T. CLEVE.

CLARENCE T. CLEVE, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

MR. REDDING. Q. Are you one of the defendants in this suit? A. I believe so.

Q. What is your occupation? A. I am a mechanic.

Q. Do you hold a deed from the Southern Pacific Railroad Company to yourself for any of the land involved in this case?

MR. CALL. We object as incompetent, immaterial and irrelevant.

A. I do. (Producing.)

MR. REDDING. The defendant now offers in evidence the original deed, No. 5880, of the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, to Clarence T. Cleve, dated August 12th, 1890.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

MR. REDDING. Mr. Call, I will offer this, and if you will allow me, have the Special Examiner copy it himself and then return me the original, because Mr. Cleve of course, wants his original document.

MR. CALL. I have no objection to the original being withdrawn upon a copy being made and certified by the Special Examiner.

MR. REDDING. Q. The land involved and mentioned in this deed is the northwest quarter (N. W. ¼) of section number fifteen, in township five north, of range

eleven west, San Bernardino base and meridian, containing one hundred and sixty acres. How much money did you pay to the Southern Pacific Railroad Company for this land, and for this deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Four hundred dollars.

MR. REDDING. We offer this in evidence as Defendants' Exhibit before the Special Examiner, No. 3.

(The deed, No. 5880, of the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, to Clarence T. Cleve, dated August 12th, 1890, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 3," and a certified copy thereof is annexed hereto.)

Q. Did you buy this land in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I did.

Q. Did you have any notice from any source of any controversy between the Government and the Southern Pacific Railroad Company in reference to the title of this land?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I did not.

Q. Have you been in quiet and peaceful possession since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I have.

Q. Where did you pay the sum of four hundred dollars for this land to the defendant, the Southern Pacific Railroad Company?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. In the *Land Office of the Southern Pacific Railroad* Company in this building.

Q. Have you paid all of the taxes, State, county and municipal, which have been levied and assesed upon this land since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. I have.

Q. Are you holding this land now as a bona-fide purchaser, in good faith and without notice?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and as being a conclusion of law.)

A. I have.

Cross-Examination.

MR. CALL. Q. What year did you say you bought this land in from the railroad company?

A. The deed is dated in 1890, I believe. I contracted to buy it in 1887.

Q. At the time you bought it, did you understand that the railroad company held this land under a grant by Congress? A. I did; yes, sir.

Q. You were aware that they had a grant from Congress?

MR. REDDING. That is objected to as not proper cross-examination and as incompetent, immaterial and irrelevant.

A. I suppose so.

MR. CALL. Q. Did you ever examine that grant?

A. I did not.

Q. Do you know what year the grant was made in?

A. I do not.

MR. REDDING. This is all subject to the same objection as not proper cross-examination and as incompetent, immaterial and irrelevant.

Q. Do you know, or did you know then, the terms and conditions of that grant?

(Question objected to by Mr. Redding as not proper cross-examination and as incompetent, immaterial and irrelevant.)

A. I cannot say that I did.

Q. You did not know, then, that there was a condition in that grant that lands reserved by the United States for any purpose or previously granted, or otherwise claimed, were not included in the grant to the railroad company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant and as not proper cross-examination.)

A. I did not.

Q. Did you examine the records of the United States Land Office before you purchased?

(Question objected to by Mr. Redding as not proper cross-examination and as immaterial, incompetent and irrelevant.)

A. I did not.

Q. Neither the local office nor the General Land Office at Washington?

(Question objected to by Mr. Redding as incompetent,

immaterial and irrelevant and as not proper cross-examination.)

A. Neither.

Q. Did you examine the records of the Secretary of State of this State before you purchased?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant and as not proper cross-examination.)

A. I did not.

Q. Did you know that the Southern Pacific Railroad Company, that received a Congressional grant referred to, was dissolved as a corporation before you purchased?

(Question objected to by Mr. Redding as not proper cross-examination and as incompetent, immaterial and irrelevant, and as calling for a conclusion of the witness.)

A. No, I cannot say that I did.

Re-Direct Examination.

MR. REDDING. Q. You bought this land in good faith, did you?

(Question objected to by Mr. Call as being incompetent, immaterial and irrelevant and as being a conclusion of law and leading.)

A. I did; yes, sir.

Q. And being in the belief that the Southern Pacific Railroad Company owned this land and held the title in fee?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, calling for a conclusion of law and leading.)

A. Yes, sir.

Q. Did the Southern Pacific Railroad Company, through its Land Agent, represent to you that it owned the land that it offered to sell to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and calling for a conclusion, and leading.)

A. They represented to me that they held a legal right to sell those lands.

Q. That they held the title?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant and calling for conclusion, and leading.)

A. That they held the title.

Q. Did you purchase the lands believing in their representations?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant and calling for a conclusion, and leading.)

A. I did; yes, sir, and no other representations.

CLARENCE T. CLEVE.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER, NO. 3.

DEED NO. 5880.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company lying in the State of California which re-

mained unsold on the first day of April, A. D. 1875, send greeting:

Whereas: On the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive, all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates, respectively, as the Board of Directors of said Southern Pacific Railroad

Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might from time to time be agreed upon between the said railroad company and the said trustees, and that when such sales had been made and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that, for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them as aforesaid;

And whereas, the said railroad company contracted to sell the lands hereinafter described, pursuant to the foregoing conditions, to Clarence T. Cleve, of the County of San Joaquin, State of California, for the sum of four hundred ($400.00) dollars, which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now therefore, in consideration of the premises and the said sum of four hundred ($400.00) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Clarence T. Cleve, and to his

heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to wit: The northwest quarter (N. W. ¼) of section number fifteen (15), in township five (5) north, of range eleven (11) west, San Bernardino base and meridian, containing one hundred and sixty (160.00) 00-100 acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appurtaining and belonging, excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since August 27th, 1886, the said purchaser having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tract as mineral land;

To have and to hold, the aforesaid premises, to the said Clarence T. Cleve, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals this twelfth day of August, A. D. 1890.

CHAS. F. CROCKER,
Pres. S. P. R. R. Co.

[Seal of the Southern Pacific Railroad Company.]

J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, [Seal.]

GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,

City and County of San Francisco—ss.

On this twelfth day of August, in the year one thousand eight hundred and ninety, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerritt L. Lansing thereto as principals and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Notarial Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: Deed No. 5880. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to Clarence T. Cleve, deed dated August 12th, 1890. Recorded at request of W. F. & Co., Sep. 4, 1890, at 36 min. past 1 P. M., in book 662, page 281, of deeds, Los Angeles County records. John W. Francis, County Recorder, by

W. F. X. Parker, Deputy. Fees, $2.30. Folio 16. (Marked Defendants' Exhibit before the Special Examiner, No. 3. Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, Sept. 9th, 1893. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

TESTIMONY OF PETER HAMILTON.

PETER HAMILTON, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

MR. REDDING. Q. Where do you reside?

A. At Rio Vista, Solano County.

Q. Have you a deed from the Southern Pacific Railroad Company, one of the defendants in this suit, for a portion of any of the lands in evidence?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. I have. (Producing.)

MR. REDDING. The defendants offer in evidence Deed No. 3057, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to Peter Hamilton and Mrs. Thomas Allison, of all of section 35, in township 7 north, of range 13 west, San Bernardino base and merid-

ian, containing 640 acres. This is similar in form to the last deed.

MR. CALL. We object to the admission of the deed as incompetent, immaterial and irrelevant.

(Deed No. 3057, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to Peter Hamilton and Mrs. Thomas Allison, dated January 18th, 1889, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 4,' and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed hereto, and the original deed returned to the witness.

MR. REDDING. Q. How much money did you and Mrs. Alison pay for this land in this deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. $1600.

Q. To whom did you pay it?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. To the Southern Pacific Railroad Company.

Q. To the Land Agent?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. To the Land Agent in this building.

Q. Have you been in quiet and peaceful possession of the land ever since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I have.

Q. Did you pay this money in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I did.

Q. Have you and Mrs. Allison paid all of the taxes, State, County and Municipal, which have been levied and assesed on these lands since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I believe we have; I know I have, and she owns the other half section; we own the section together.

Q. Have your interests been divided or are they undivided?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. They are undivided, that is they are divided among ourselves, but we had to receive the section together.

Q. You have not made any deed among yourselves?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. No sir.

Q. Did you purchase this land without notice of any controvrsy between the Government of the United States and the Southern Pacific Railroad Company, one of the defendants herein?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and the further ground that the question is leading and involves a conclusion of law.)

A. I did.

Q. Did you believe, in good faith, that the Southern Pacific Railroad Company was the owner of this land when it sold it to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I certainly did.

Q. Were you a bona fide purchaser for value received without notice of the land involved?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and as involving a conclusion of law and not the best evidence.)

A. I was.

Cross Examination.

MR. CALL. Q. When did you buy this land from the Company?

A. The contract was made in, either 1884 or 1885, February; I think it was 1884, but it might be 1885; I don't remember whether it was four years we had time to pay it in; it was either February, 1884 or 1885.

Q. Have you a copy of the contract?

A. I have not; I delivered my contract up when I received the deed.

Q. The contract was merged into the deed?

A. Yes sir, I gave up my receipts and contract, if I remember right, when I received the deed.

Q. Did you suppose when you bought this land, or contracted to buy it, that the Railroad Company held this under a grant of Congress?

A. I understood that way, that they were to receive a patent for that land under a grant from Congress.

Q. Did you ever read the grant of Congress?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I did not.

Q. This deed refers to a certain mortgage made by the Railroad Company to D. O. Mills and Gerrit L. Lansing, trustees, the deed from the Southern Pacific Railroad Company to yourself; did you ever examine that mortgage or deed of trust referred to in this suit?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. No sir.

Q. You say you never examined the Act of Congress under which this is claimed?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. No sir, I have not.

Q. You are not aware, then, that lands which had been previously granted by Congress, or reserved for any purpose, or otherwise claimed, were not included in the grant to the railroad company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination, and furthermore, that it is calling for a legal conclusion from the witness.)

A. I was not aware of anything but that the Railroad Company was to receive a patent for that land; I distinctly understood that they were to receive a patent for it, and when they received a patent for it I was to receive a deed.

Q. What was the source of your information in that respect?

(Question objected to by Mr. Redding as incompetent,

immaterial and irrelevant, and not proper cross examination.)

A. Our land was purchased from M. L. Wicks, of Los Angeles, and I considered that his judgment was satisfactory evidence that the Railroad Company would receive them.

Q. You bought of M. L. Wicks?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. Through M. L. Wicks from the Railroad Company; he bought direct from the Railroad Company; he done the original transaction for us.

Q. Wicks had a contract from the Railroad Company originally for this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. Yes sir, and the Railroad Company accepted us in place of M. L. Wicks.

Q. Then you really bought of Wicks?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I understood we were buying off the Railroad Company.

Q. You bought the contracts which Wicks held, then?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross examination.)

A. We understood it was railroad land; I cannot an-

swer that question; I understood we were buying off the Railroad Company lands through M. L. Wicks, as agent or attorney.

Q. You said that Wicks had a contract for this land from the Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross examination.)

A. I do not know that he had a contract; he could receive a contract at any time; I understood if I went to purchase a piece of land from the Southern Pacific Railroad Company, to buy off him, he could receive a contract and assign it over to me and they accept me in place of Wicks.

Q. That is what you did, then?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross examination.)

A. That is what we did.

Q. Then the contract was originally made with Wicks?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross examination.)

A. Yes sir, that way.

Q. Do you know what Wicks' information was in regard to the validity of the Railroad Company's claim to this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, and calling for hearsay evidence.)

A. I do not; I supposed that his information was correct.

Q. Did you or did you not, know anything about what his information was?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I had only my own judgment, believing his information was correct.

Q. You did not really know the facts about it, then?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I suppose I did through him.

Q. Did you know that a grant had been made by Congress to the Atlantic and Pacific Railroad Company at the time or before you contracted to buy this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I did not.

Q. You never examined the public laws of the United States, then, in that respect?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. No sir.

Q. Did you know at the time you purchased this land that this land was withdrawn for the Atlantic and Pacific Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross examination, calling for a legal conclusion, and misleading.)

A. I distinctly understood I was buying this land from the Southern Pacific Railroad Company, believing they were to receive a patent for it; that is all I knew.

Q. I wish to know from the witness whether he knew that this land had been withdrawn for the Atlantic and Pacific Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross examination, and calling for a conclusion.)

A. I did not.

Re-direct Examination.

MR. REDDING. Q. Did the Southern Pacific Railroad Company through its Land Agent, represent to you that it owned the land that it offered to sell to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and calling for a conclusion, and leading.)

A. They represented to me that they held a legal right to sell those lands.

Q. That they held the title?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. That they held the title.

Q. Did you purchase the lands believing in their representations?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. I did, yes sir; and no other representations.

PETER HAMILTON.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.—No. 4.

DEED NO. 3057.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D., 1875. send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust, as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bond for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each,

numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct: all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company; pany;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remain-

ing trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and States of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing, did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have power to act, by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowlegded and recorded in each and all the Counties in which said lands, or any part thereof, are situated and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place, and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing con-

ditions, to Peter Hamilton and Mrs. Thomas Allison, of the County of Solano, State of California, for the sum of sixteen hundred ($1,600.00) dollars, which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now therefore, in consideration of the premises, and the said sum of sixteen hundred ($1,600.00) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Peter Hamilton and Mrs. Thomas Allison, and to their heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to wit: all of section No. thirty-five (35) in township seven (7) north, of range thirteen (13) west, San Bernardino base and meridian, containing six hundred and forty (640.00) acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes since 14th of January, 1884, the grantee herein having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tract as mineral land.

To have and to hold, the aforesaid premises, to the said Peter Hamilton and Mrs. Thomas Allison, their heirs and assigns, to them and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company, has caused these presents to be signed by its President and Secretary, and sealed with its corporate

seal, and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this eighteenth day of January, A. D., 1889.

CHAS. F. CROCKER,
Pres. S. P. R. R. Co.

[Seal of the Southern Pacific Railroad Company.]

J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, [Seal.]
GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their joint Attorney-in-fact.

State of California,
City and County of San Francisco,—ss.

On this eighteenth day of January, in the year one thousand eight hundred and eighty-nine, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscrimbed to the within instrument as the Attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills

and Gerritt L. Lansing, thereto as principals and his own name as Attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Notarial Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

TESTIMONY OF WILLIAM FERGUSON.

WILLIAM FERGUSON, called as a witness on behalf of the defendants, being duly sworn testified as follows:

Direct Examination.

MR. REDDING. Q. Are you the holder and purchaser of any land from one of the defendants herein, namely, the Southern Pacific Railroad Company, which is involved in this suit?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I am.

Q. Will you produce your deed, please?

(Witness produces deed.)

MR. REDDING. The defendants offer in evidence a deed from the Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, No. 3053, to William Fer-

guson and James Hamilton, for the following land: All of section No. 27, in township 7 north, of range 13 west, San Bernardino base and meridian, containing 640 acres.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Deed No. 3053, Southern Pacific Railroad Co., D. O. Mills, and Gerrit L. Lansing, trustees, to William Ferguson and James Hamilton, dated January 18th, 1889, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 5," and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed hereto and the original deed returned to the witness.)

Q. How much money did you and Mr. James Hamilton pay for this land?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. $1,600 was the principal and we paid interest beside; we bought the land on time.

Q. When you got your deed, which is now offered in evidence, you paid how much as the purchase price independent of anything else?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. $1,600.

Q. Where did you pay this money?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. We paid it in the office of the Land Agent, Mr. Madden.

Q. Was it United States coin?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. Principally United States coin; I think I gave Mr. Madden once a check, which was equivalent to coin, to be drawn on a bank in the city here.

Q. You had money in the bank upon which you drew a check?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. No sir, I did not at that time; I got this check from somebody else. I don't remember who.

Q. Was there money in the bank for the purpose of taking up that check?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. Yes sir, there was money in the bank for the purpose of taking up that check.

Q. Did you buy this land in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and as involving a conclusion of law and as being leading.)

A. I did.

Q. Have you and Mr. Hamilton been in quiet and peaceful possesion of this land since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and as involving a conclusion of law, and being leading.)

A. We have.

Q. Have you paid all of the taxes, State, County, and municipal, which have been levied upon the lands and assessed?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. We have paid all the taxes as far as we know.

Q. Do you claim this land as your own, now, at the present time?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. We do.

Q. Did you have any notice at the time of your contract, or at the time of your final purchase, or at any time, of any controversy between the government and the Southern Pacific Railroad Company with reference to these lands?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as involving a couclusion of law, and being leading.)

A. At the time of our purchase we did not know there was and controversy whatever; of course since that time we have; we had no legal notice of it, however.

Q. At the time of the purchase you were without notice?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as involving a conclusion of law, and being leading.)

A. Knew nothing of it at all.

Q. Did you purchase this land, believing the Railroad owned the same?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant.)

A. Yes sir.

Q. Are you now occupying this land in good faith as a

bona fide purchaser without notice and for value received?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as being leading, and a conclusion of law.)

A. We are; how do I understand your question; do you mean that we are living on it, or are in possession of it?

Q. In possession of it?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading and as a conclusion of law.)

A. We are.

Cross Examination.

MR. CALL. Q. What was the date of your original contract with the Railroad Company for this land?

(Question objected to by Mr. Redding as incompetent, immaterial, irrelevant, and not proper cross examination.)

A. By referring to our deed I find it is in 1889, and we had five years to pay for it, so, of course, that would bring it in 1884, although I do not remember distinctly it being that time, but it mush have been in 1884, it was in February, however, the first part of February.

MR. REDDING. I will state that these contracts, when they are entered into, are generally five year contracts, and that if a deed is issued on a certain date the date of the contract will be five years prior thereto.

MR. CALL. Q. Did you read your deed from the Railroad Company to yourself?

(Question objected to by Mr. Redding as incompetent,

immaterial and irrelevant, and not proper cross examination.)

A. Our present deed?

Q. Yes sir.

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. Yes sir.

Q. Did you notice that it referred in there to a mortgage to Lloyd Tevis and Gerrit L. Lansing?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I did.

Q. Did you ever look at that mortgage?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination, and furthermore, that the deed itself shows that the trustees of that mortgage release the interest that the mortgagees have in the bond involved.)

A. I did not.

Q. Did you know that that instrument refers to the Acts of Congress as being the source of title of the Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I don't clearly understand; do you mean by that instrument, the mortgage?

Q. Yes, the mortgage.

(Question objected to by Mr. Redding as incompetent,

immaterial and irrelevant, and not proper cross examination.)

A. Of course I did not, because I did not know anything about it.

Q. Under what title did you suppose the Railroad Company held this land, then, when you bought it, or pretended to buy it?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I understood that they held it by grant from Congress, and soon after we purchased, we had notice from the Railroad that they had a patent for it, and we supposed that that was the best title we could have.

Q. Was the patent recorded?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I could not tell.

Q. Did you examine the patent?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I did not see the patent; I just simply got notice from the railroad company that they had it.

Q. You did not know, then, that the patent purported to be executed in conformity with, and in pursuance of an Act of Congress?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. We did not know it, but we supposed so.

Q. Did you ever read the Act of Congress under which they claimed this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I do not think I ever did.

Q. You did not know whether that Act of Congress granted that land or not, then?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination, and also that it calls for a legal conclusion of the witness.)

A. I do not know just how to answer that question, because we got most of our information from these parties; unless we were lawyers, or something of that kind, we would get it from papers and from books, and from other parties, and in that way I have heard it, but I do not know it.

Q. You have never examined the terms and conditions of the grant, then, yourself?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I did not.

Q. Did you know that a grant had been made by Congress to the Atlantic and Pacific Railroad Company of lands in California?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. Not at that time; I knew it afterwards, I knew it by hearsay.

Q. Did you know that these lands were withdrawn for the Atlantic and Pacific Railroad?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination, and furthermore, that they are trying to establish a fact on cross examination as evidence in the case which does not exist.)

A. Not at that time; I never heard of it then.

Q. Did you ever examine the records of the United States Land Office to determine whether this land had been reserved by the Unitd States for any other purpose?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross examination.)

A. I have not.

Re-direct Examination.

MR. REDDING. Q. Did the Southern Pacific Railroad Company, through its Land Agent, represent to you that it owned the land that it offered to sell to you?

(Question objected to by Mr. Call as immaterial, irrelevant and incompetent, leading, and calling for a conclusion.)

A. They represented to me that they held a legal right to sell those lands.

Q. That they held the title?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. That they held the title.

Q. Did you purchase the lands, believing in their representations?

(Question objected to by Mr. Call as immaterial, irrelevant and incompetent(as leading, and calling for a conclusion.)

A. I did, yes sir.

WM. FERGUSON.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER, NO. 5.

DEED NO. 3053.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D., 1875. send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust, as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the let-

ters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bond for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct: all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or

purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company; pany;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and States of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing, did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have power to act, by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowlegded and recorded in each and all the Counties in which said lands, or any part thereof, are situated and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under

the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place, and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said railroad company has sold the lands hereinafter described, pursuant to the foregoing conditions, to William Ferguson and James Hamilton, of the County of Solano, State of California, for the sum of sixteen hundred ($1600.00) dollars, which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now therefor, in consideration of the premises and the said sum of sixteen hundred ($1600.00) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said William Ferguson and James Hamilton, and their heirs and assigns, the following described tract of land, situate, lying and being in the County of Los Angeles, and State of California, to wit: All of section number twenty-seven (27), in township seven (7) north, of range thirteen (13) west, San Bernardino base and meridian, containing six hundred and forty (640.00) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes since 14th of January, 1884, the grantee

herein having heretofore agreed with said company to pay the same; and also reserving all claim of the United States to said tract as mineral land.

To have and to hold, the aforesaid premises, to the said William Ferguson and James Hamilton, their heirs and assigns, to them and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals this eighteenth day of January, A. D. 1889.

CHAS. F. CROCKER,
Pres. S. P. R. R. Co.
J. L. WILLCUTT,
Sec. S. P. R. R. Co.

[Seal of the Southern Pacific Railroad Company.]

D. O. MILLS, [Seal.]
GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On this eighteenth day of January, in the year one thousand eight hundred and eighty-nine, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the President, and

J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also on this the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within istrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Notarial Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: Deed No. 3053. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to William Ferguson and James Hamilton. Deed dated January 18th, 1889. Recorded at request of W. F. & Co., Dec. 20, 1889, at 3 min. past 2 P. M., in book 616, page 222, of deeds, Los Angeles County records. John W. Francis, County Recorder, by W. F. X. Parker, Deputy. Fees, $2.45. Folio 16. (Marked Defendants' Exhibit before the Special Examiner, No. 5. Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Exam-

iner. San Francisco, Sept. 9th, 189. [Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

TESTIMONY OF IRA H. BRADSHAW.

IRA H. BRADSHAW, called as a witness on behalf of the defendants, being duly sworn testified as follows:

Direct Examination.

MR. REDDING. You are one of the defendants in this action, are you? A. I believe so.

Q. Have you a deed for any of the lands involved in this action?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. Yes, sir, I have. (Producing.)

MR. REDDING. The defendants offer in evidence deed No. 5878, from the Southern Pacific Railroad Company, D. O. Mils and Gerrit L. Lansing, trustees, to Ira H. Bradshaw, dated September 29th, 1887, for the northeast quarter of section fifteen, in township five north, of range eleven west, San Bernardino base and meridian, containing 160 acres.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Deed No. 5878, Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, to Ira H. Bradshaw, dated September 29th, 1887, is marked by the

Special Examiner "Defendants' Exhibit before the Special Examiner, No. 8," and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed hereto, and the original deed returned to the witness.)

Q. How much money did you pay for this land?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. Four hundred dollars.

Q. To whom?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. To the agent of the Southern Pacific Railroad Company, Jerome Madden.

Q. Where did you pay it?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. I paid it in the land office.

Q. Have you been in quiet and peaceable possesion of this land ever since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. Yes, sir.

Q. Have you paid all the taxes, State, county and municipal, which have been levied and assessed on the land since the date of your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.

A. I have, all that I know of. I wrote for a statement last year, and they said that it had not been assessed, but

up before that I paid. I believe the receipts are left with you. There are some of them there.

Q. Did you purchase this land, believing that the Southern Pacific Railroad Company was the owner of it at the time they made out the deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I did.

Q. Did you purchase it in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading and involving a question of law.)

A. I did.

Q. Did you have any notice of any kind from any source of any controversy between the Government of the United States and the Southern Pacific Railroad Company, one of the defendants in this suit, at the time of this purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as involving a question of law and not the best evidence.)

A. I did not, or I should not have purchased it.

Cross-Examination.

MR. CALL. You say you thought the railroad company owned this land?

A. Yes, sir; I did.

Q. How did you think they held it; by what kind of a title?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. By a patent.

Q. Did you understand there was an Act of Congress making them a grant of this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examintion.)

A. I understand they had a patent for the land signed by U. S. Grant.

Q. What authority was there to make that patent?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I do not know.

Q. Did you ever read the Acts of Congress?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

Q. Did you supose the officers of the Land Department could issue a patent when there was no law authorizing it?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examintion.)

A. I do not know; I simply saw the patent signed by U. S. Grant. It was shown to me by Jerome Madden.

Q. Did you ever read the Act of Congress of March 3d, 1871, making a grant to the Southern Pacific Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examintion.)

A. I did not.

Q. Did you know that this land had been previously granted to the Atlantic and Pacific Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination, and calling for hearsay evidence.)

A. I did not.

Q. Did you know that it was withdrawn for the Atlantic and Pacific Railroad at the time you bought?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, and calling for hearsay testimony.)

A. I did not. If I had I should not have bought.

Q. Did you examine the records of the Land Office?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

Re-Direct Examination.

MR. REDDING. Q. Did the Southern Pacific Railroad Company represent to you that they owned the land when they offered to sell it to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. They did.

Q. Did you purchase this land relying upon those representations?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. I did.

A. And believeing in them?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. Yes, sir.

IRA H. BRADSHAW.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER—No. 8.

DEED NO. 5878.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all of the lands of the said Southern Pacific Railroad Company lying in the State of California which remain unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and

followed by the succeeding letters in regular order to and including the letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct: All of said bonds aggregating the sum of forty-six millions of dollars.

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees, and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely

and forever release the lands so conveyed from any and all lien or encumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875, and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Co., pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerritt L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the Counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills, and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and re-

corded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Ira H. Bradshaw, of the City and County of San Francisco, in the State of California, for the sum of four hundred ($400.00) 00-100 dollars, which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now therefore, in consideration of the premises, and the said sum of four hundred ($400.00) 00-100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Ira H. Bradshaw, and his heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to wit: the northeast quarter (N. E. ¼) of section fifteen (15) in township five (5) north, of range eleven (11) west, San Bernardino base and meridian, containing one hundred and sixty (160) 00-100 acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold, the aforesaid premises, to the said Ira H. Bradshaw, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary pro tem, and sealed with its corporate seal, and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twenty-ninth (29th) day of September, A. D. 1887.

CHAS. F. CROCKER,
Vice-Pres. S. P. R. R. Co.

[Seal of the Southern Pacific Company.]

FRED'K MADGE,
Sec. S. P. R. R. Co., pro tem.

D. O. MILLS, [Seal.]

GERRIT L. LANSING. [Seal.]
Trustees.

By JEROME MADDEN,
Their joint Attorney-in-fact.

State of California,
City and County of San Francisco,—ss.

On this 29th day of September, in the year one thousand eight hundred and eighty-seven, before me, E. B. Ryan, a Notary Public in and for the said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice-President, and Fred'k Madge, known to me to be the Secretary pro tem, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as at-

torney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: Deed No. 5878. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to Ira H. Bradshaw, deed dated Sept. 29th, 1887. Recorded at request of W. F. & Co. Oct. 20, 1887, at 1 min. past 10 A. M. in book 342, page 15, of deeds, Los Angeles County records. Frank A. Gibson, County Recorder, By Arthur Bray, Deputy. Fees $2.50 due. Folios 14. (Marked "Defendants' Exhibit before the Special Examiner, No. 8, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof. Stephen Potter, Special Examiner. San Francisco, Sept. 9th, 1893. [Endorsed]: Filed Dec. 5th, 1893, Wm. M. Van Dyke, Clerk.

December 22, 1893. Present: J. H. Call, Esq., Special Assistant United States Attorney, for Complainant; W. J. Trask, Esq., for Respondents.

JOHN KENEALY, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK:

Q. 1. What is your name? A. John Kenealy.

Q. 2. Are you one of the defendants in this action?

A. Yes sir.

Q. 3. Where were you born?

A. I was born in Ireland.

Q. 4. Are you a naturalized citizen of the United States? A. Yes sir.

MR. TRASK. I suppose you waive the production of his papers?

Q. 5. (By MR. CALL.) Where were you naturalized?

A. Here in Los Angeles in 1875 or 1876.

Q. 6. Took out your second papers? A. Yes sir.

MR. CALL. It is admitted he is a naturalized citizen.

Q. 7. (By MR. TRASK.) Did you purchase any land that is involved in this action?

MR. CALL. Question objected to as incompetent, irrevelant and immaterial, and not the best evidence.

A. Yes sir.

Q. 8. (By MR. TRASK.) What land was it Mr. Kenealy?

MR. CALL. Same objections.

A. I have, in connection with two other parties—

Q. 9. (By MR. TRASK.) Who are they?

A. Richard Dillon and John McClure.. A deed from the Southern Pacific, Uniten States patent, for the east half of the northeast quarter.

Q. 10. A deed from the Southern Pacific Railroad Company?

A. Yes sir, a deed from the Southern Pacific Railroad Company, patented lands. Section 29, two north and fourteen west, ninety-three acres.

Q. 11. Describe the whole of it.

A. East half of northeast quarter, ninety-three acres in all, section 29, 2 north, 14 west. Then I have another tract, the southwest quarter of section 21, 2 north, 14 west, containing about 130 acres. For this I hold a deed from the Southern Pacific Railroad Company.

Q. 12. Can you produce those deeds? A. I can.

MR. TRASK. You will have copies of them made then and they may be certified to by Judge Lamme hereafter, Mr. Call.

MR. CALL. When filed, it will be with the same effect as if now offered. The copies may be introduced in lieu of originals when certified by the Examiner, and the originals withdrawn. Subject to the objections made.

Documents to be marked Defendants' Exhibit No. 104, before E. H. Lamme, Examiner.

Q. 13. (By MR. TRASK.) Have you paid the taxes on all these lands since you gentlemen became the purchasers of it? A. Yes sir.

Q. 14. Do you know what you paid for these lands?

A. The deeds and contracts would show it.

Q. 15. Do these deed contain the consideration you paid for these lands? A. Yes sir.

Q. 16. Do you occupy these lands? A. Yes sir.

Q. 17. Do you know the date you purchased it?

A. It is either nine or ten years ago since we purchased it, either six or seven years since we got a deed.

Q. 18. You claim to be a purchaser of this land in good faith, I suppose? A. Yes sir.

MR. TRASK. That is all.

Cross Examination.

By MR. CALL.

Q. 19. As to the lands which you say you have a deed for, were those lands contracted to be sold to you before the deed was made?

A. Yes sir, we had a contract before the deed was made.

Q. 20. What did you do with those contracts?

A. Well, I may have them. I am not sure about that. but I know I have the deed. I can't say.

Q. 21. I ask you to examine your papers, and, if you have them, to produce the contracts with the deeds.

A. Yes sir.

Q. 22. Is that contract in the usual form of the railroad contracts?

A. Yes, I am pretty certain of that. I know it is of those that I hold the contract for in township seven. They are the usual form of contract.

Q. 23. I am referring to the contract that was made for the land for which you have a deed.

A. Well, really I could not answer that. It is so remote now. I thought they were of no value anyway when I got the deed.

MR. CALL. That is all.

MR. TRASK. Mr. Call, will you waive his signature to his testimony and stipulate that it will have the same effect as though signed?

MR. CALL. Yes sir.

DEED NO. 2839.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D., 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G: Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four

thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct, all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company.

And whereas, on the 24th day of March, 1883, Lloyd

Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that, for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said land, or any part thereof, are situated and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills, and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute, and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company has sold the land hereinafter described, pursuant to the foregoing conditions, to Richard Dillon and John Kenealy of the County of Los Angeles, in the State of California, for the sum of three hundred and twenty-four 65-100 ($324.65-100) dollars, which sum has been by..h....fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now therefore, in consideration of the premises, and the said sum of three hundred and twenty-four 65-100 ($324 65-100) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Richard Dillon and John Keneally and to their heirs and assigns, the following described tracts of land situate, lying and being in the County of Los Angeles and State of California, to wit: lots three (3) and four (4) (lots 3 and 4) and south half of southwest quarter (S. ½ of S. W. ¼) of section No. twenty-one (21) in township two (2) north, of range fourteen (14) west, San Bernardino base and meridian, containing one hundred and twenty-nine 86-100 (129 86-100) acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold, the aforesaid premises to the said Richard Dillon and John Kenealy, their heirs and assigns, to them and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its cor-

porate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this second (2d) day of October, A. D. 1886.

CHAS. CROCKER,
Pres. S. P. R. R. Co.

J. L. WILLCUTT,
Secretary S. P. R. R. Co.

[Seal.]

D. O. MILLS, [Seal.]
GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their joint attorney-in-fact.

State of California,
City and County of San Francisco,—ss.

On this second (2d) day of October, in the year one thousand eight hundred and eighty-six (1886), before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, personally appeared Charles Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me, the Notary Public aforesaid, personally apeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing, thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

In the Circuit Court of the United States in and for the Southern District of California.

United States of America, Complainant, vs. Southern Pacific Railroad Company et al., Defendants.—184.

I hereby certify that the foregoing is a full, true, complete and correct copy of the original of Defendants' Exhibit No. 106, introduced before me in said cause, and the original of which was withdrawn by stipulation of the solicitors of the respective parties.

E. H. LAMME,

Standing Examiner and Master in Chancery.

DEED NO. 2817.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all of the lands of the said Southern Pacific Railroad Company lying in the State of California which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, On the first day of April, A. D. 1875, said Southern Pacific Railroad Company conveyed all its lands

lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Com-

pany should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company.

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill such vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter

of attorney, which should be duly acknowledged and recorded in each and all the counties in which said land, or any part thereof, are situated and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills, and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute, and deliver all conveyances required of them as aforesaid;

And whereas, the said Railroad Company has sold the land hereinafter described, pursuant to the foregoing conditions, to Richard Dillon, of the County of Los Angeles, in the State of California, for the sum of four hundred and sixty-nine 40-100 ($469.40) dollars, which sum has been by him fuly paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid.

Now, therefore, in consideration of the premises and the said sum of four hundred and sixty-nine 40-100 ($469.40-100) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Richard Dillon, and his heirs and assigns, the following described tracts of land situate, lying and being in the County of Los Angeles, and State of California, to wit: The east half of the northeast quarter (E. ½ of N. E. ¼)

and lots one (1) and two (2) in northeast quarter (lots 1 and 2 in N. E. ¼) of section number twenty-nine (29), in township two (2) north, of range fourteen (14) west, San Bernardino base and meridian, containing ninety-three 88-100 (93 88-100) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold, the aforesaid premises, to the said Richard Dillon, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals this second (2d) day of October, A. D. 1886.

CHAS. CROCKER,
[Seal.] Pres. S. P. R. R. Co.

J. L. WILLCUTT,
Secretary S. P. R. R. Co.

D. O. MILLS, [Seal.]

GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On this second (2nd) day of October, in the year one thousand eight hundred and eighty-six (1886), before me,

E. B. Ryan, a Notary Public in and for said City and County of San Francisco, personally appeared Charles Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: 26. Deed No. 2817. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to Richard Dillon. Deed dated October 2d, 1886. Recorded at request of grantee Oct. 15, 1886, at 53 min. past 11 A. M., in book 175, deeds, page 507, records Los Angeles County. Frank A. Gibson, County Recorder, by Arthur Bray, Deputy. 4.20 paid. U. S. Cir. Court, Southern District California. U. S. of A. vs. S. P. R. R. Co. et als. 184, Master's and Examiner's Exhibit, No. 106. E. H. Lamme,

Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

December 23, 1893. Present: J. H. Call, Special Assistant United States Attorney, for complainant; W. J. Trask, Esq., for defendants.

It is admitted by counsel that the testimony of Richard Dillon, if produced upon the trial of this case, would be the same as that of John Kenealy, and may be received with the same effect, subject to all objections made to the testimony of said John Kenealy, and all other objections as to the competency, materiality and relevancy of such evidence.

MR. TRASK. Defendant produces deed of the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, to Richard Dillon and John Kenealy, numbered 2839, and deed of same parties, grantors, to Richard Dillon, numbered 2817.

MR. CALL. Same objection.

MR. TRASK. It is stipulated, is it, that this deed to Richard Dillon will be admitted, subject to the same objection?

MR. CALL. It is admitted that the alleged deed from the Southern Pacific Railroad Company to Richard Dillon, numbered 2817, may be offered at this time, subject to all objections as to its competency, materiality and relevancy; and it is stipulated that a copy may be made of the deed No. 2817 to Richard Dillon and introduced in lieu

of the original, when certified by the Examiner and the original withdrawn, subject to the objections made.

Document to be marked Defendants' Exhibit, No. 106, before E. H. Lamme, Examiner.

December 26, 1893. Present: J. H. Call, Esq., Special Assistant United States Attorney, for complainant; W. J. Trask, Esq., for defendants.

McHENRY PIERCE, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK.—

Q. 1. What is your name? A. McHenry Pierce.

Q. 2. Where were you born? A. State of Iowa.

Q. 3. Are you one of the defendants in this action? This is suit 184, in the United States Court, brought against the Southern Pacific Railroad Company and a large number of defendants.

A. I presume so.

Q. 4. Have you purchased any land from the Southern Pacific Railroad Company?

MR. CALL. Objected to as incompetent, immaterial and not the best evidence.

A. Yes, sir.

Q. 5. Did you receive a deed for that land?

MR. CALL. Same objections.

A. Yes, sir.

MR. TRASK. The defendant now offers in evidence deed from Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, to J. Garber and McH. Pierce, No. 9205, for the following described land, situate, lying and being in the County of Los Angeles, State of California, to wit: The west half of southwest quarter of section No. 25, township 5 north, of range 13 west, S. B. M., containing eighty acres, and the same is marked Defendants' Exhibit, No. 107, before E. H. Lamme, Examiner.

MR. CALL. Same objections.

Q. 6. By MR. TRASK. You are the McH. Pierce referred to in that deed as one of the grantees?

MR. CALL. Same objections.

A. Yes, sir.

Q. 7. What did you pay for that land?

MR. CALL. Same objections.

A. We paid five dollars an acre for it.

Q. 8. By MR. TRASK. That is, four hundred dollars?

MR. CALL. Same objections.

A. Yes, sir.

Q. 9. By MR. TRASK. Paid it to the Southern Pacific Railroad Company?

MR. CALL. Same objections.

A. Yes, sir; got their receipt for the same.

Q. 10. By MR. TRASK. When did you purchase it? About when?

MR. CALL. Same objections.

A. We purchased it, if I recollect, in the spring of 1888. I would say about March.

Q. 11. By MR. TRASK. Have you and Mr. Garber paid the taxes on that land since you purchased it?

MR. CALL. Same objections.

A. Yes, sir.

Q. 12. By MR. TRASK. You claim to be bona fide purchasers without notice?

MR. CALL. Same objections.

A. Yes, sir.

MR. TRASK. That is all.

Cross-Examination.

By MR. CALL.—

Q. 13. Was this deed made pursuant to a contract? Did you have a contract for this deed before you got the deed?

A. Yes; we had a contract, got of Mr. James B. Randol.

Q. 14. What did you do with that contract?

A. We returned that to the Southern Pacific Railroad Company.

MR. CALL. Is that in the usual form, Mr. Trask, of the railroad contracts?

MR. TRASK. I don't know.

Q. 15. By MR. CALL. You say you have paid the taxes all the time on this land since you bought it?

A. Yes, sir. We suposed we paid it. We paid it and they gave us receipts for it.

MR. CALL. That is all. We will waive the signature of the witness to this testimony.

JONATHAN GARBER, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK.—

Q. 1. What is your name?

A. Garber; Jonathan Garber.

Q. 2. Where were you born? A. Pennsylvania.

Q. 3. Are you one of the defendants in this action?

A. I suppose that is what you would call me.

Q. 4. In connection with the last witness, McH. Pierce, did you purchase certain lands of the Southern Pacific Railroad Company involved in this action?

MR. CALL. Objected to as incompetent, immaterial and irrelevant, and not the best evidence.

A. We purchased it of Mr. Randol.

Q. 5. By MR. TRASK. Well, did you receive a deed for these lands?

MR. CALL. Same objections.

A. Yes, sir.

Q. 6. By MR. TRASK. From the Southern Pacific Railroad Company?

MR. CALL. Same objections.

A. Yes, sir.

Q. 7. By MR. TRASK. I will ask you if this is the deed? (Witness shown Defendants' Exhibit, No. 107, before E. H. Lamme, Examiner.)

MR. CALL. Same objections.

A. That is certainly the deed.

Q. 8. Are you the J. Garber referred to in that deed?

MR. CALL. Same objections.

A. Yes, sir.

Q. 9. By MR. TRASK. Have you and Mr. Pierce paid for this land?

MR. CALL. Same objections.

A. Yes, sir.

Q. 10. By MR. TRASK. What did you pay?

MR. CALL. Same objections.

A. We paid five dollars an acre; four hundred dollars.

Q. 11. By MR. TRASK. To whom? Southern Pacific Railroad Company?

MR. CALL. Same objections.

A. No, sir; we paid part of it to Mr. Randol, and the balance of it to the Southern Pacific Railroad Company, and they made us the deed.

Q. 12. By MR. TRASK. You have paid all taxes on it since you received it?

MR. CALL. Same objections.

A. Yes, sir.

MR. TRASK. That is all.

MR. CALL. That is all.

It is stipulated that the signature of the witness be waived.

G. 299—5-18-89-500.

DEED NO. 9205.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company lying in the State of California which re-

mained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, On the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive, all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company

may direct, all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said railroad company and the said trustees, and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or encumbrance for or on acount of said bonds, or any other debt or obligation of the said railroad company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to filll said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that, for the sake of convenience in making said conveyances, the said trustees should have power to act, by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them as aforesaid;

And whereas, the said railroad company contracted to sell the lands hereinafter described, pursuant to the foregoing conditions, to F. M. Randolph for the sum of two hundred 00-100 ($200.00) dollars, which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, in part by the said F. M. Randolph, and the remainder by J. Garber and McH. Pierce, his assignees;

Now therefore, in consideration of the premises, and the said sum of two hundred 00-100 ($200.00)dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Co., and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and

convey to the said J. Garber and McH. Pierce, of the County of Los Angeles, State of California, and to their heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to wit: The west half of southwest quarter (W. ½ of S. W. ¼) of section number twenty-five (25), in township five (5) north, of range thirteen (13) west, San Bernardino base and meridian, containing eighty 00-100 (80.00) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since January 30th, 1888, the said purchaser having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tract as mineral land;

To have and to hold, the aforesaid premises, to the said J. Garber and McH. Pierce, their heirs and assigns, to them and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal, and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals this twenty-eighth day of January, A. D. 1890.

TIMOTHY HOPKINS,
[Seal.] Vice-Pres. S. P. R. R. Co.
J. L. WILLCUTT,
Sec. S. P. R. R. Co.
D. O. MILLS, [Seal.]
GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,

City and County of San Francisco—ss.

On this twenty-eighth (28th) day of January, in the year one thousand eight hundred and ninety (1890), before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, prsonally appeared Timothy Hopkins, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as pricipals and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

NATHAN COLE, Jr., called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK:

Q. 1. What is your name?

A. Nathan Cole, Jr.

Q. 2. Where were you born?

A. Born in St. Louis, Missouri.

Q. 3. Are you one of the defendants in this action?

A. I am.

Q. 4. Have you purchased any portion of the land involved in this action?

MR. CALL. Objected to as incompetent, immaterial, irrelevant and not the best evidence.

A. I have.

Q. 5. By MR. TRASK. From whom?

MR. CALL. Same objections.

A. From H. K. W. Bent and Geo. D. Rowan.

Q. 6. By MR. TRASK. You may describe the lands you purchased.

MR. CALL. Same objections.

A. It is the north half of section 13, township 5 north, range 11 west, S. B. M.

Q. 7. By MR. TRASK. Did you receive a deed for this land?

MR. CALL. Same objections.

A. Receive an assignment of a contract?

Q. 8. By MR. TRASK. Well, did you receive a deed for it finally?

MR. CALL. Same objections.

A. Well, I first received their assignment of the contract they held with the Southern Pacific Railroad Company, and then afterwards paid for the land and got a deed from the Southern Pacific Railroad Company.

Q. 9. By MR. TRASK. I will show you this instrument and ask you if this is the deed you received from the Southern Pacific Railroad Company?

MR. CALL. Same objections.

A. That is the deed; yes sir.

MR. TRASK. Defendants now offer in evidence deed numbered 4687, Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, tr ustees, to Nathan Cole, Jr., for the following described lands, situate, lying and being in the County of Los Angeles, State of California, to wit: The north half of section No. 13, township 5 north, range 11 west, S. B. M., containing three hundred and twenty acres of land.

Document marked Defendants' Exhibit, No. 109, before E. H. Lamme, Examiner.

MR. CALL. Same objections.

Q. 10. By MR. TRASK. What did you pay for this land, Mr. Cole?

MR. CALL. Same objections.

A. You mean in this deed?

Q. 11. By MR. TRASK. Yes, the land described in this deed.

MR. CALL. Same objections.

A. Paid the railroad company two dollars and a half an acre for it. I paid Bent and Rowan ten times that amount, I guess.

Q. 12. By MR. TRASK. About twenty-five dollars per acre?

MR. CALL. Same objections.

A. About twnty-five dollars.

Q. 13. By MR. TRASK. In addition to this twenty-five dollars, you say you paid the railroad company two dollars and a half an acre?

MR. CALL. Same objections.

A. Yes sir. Well, I would qualify that and say twenty dollars. I bought the water rights and a lot of other land with it.

Q. 14. By MR. TRASK. You say about twenty dollars per acre?

MR. CALL. Same objections.

A. About twenty dollars.

Q. 15. By MR. TRASK. Have you paid all the taxes upon this land since you purchased it that have been assessed against it?

MR. CALL. Same objections.

A. I have, yes sir.

Q. 16. By MR. TRASK. Did you purchase it without any knowledge or notice, so far as you know, of any of the rights of the Government of the United States in and to it?

MR. CALL. Same objections.

A. You mean from Bent and Rowan?

Q. 17. By MR. TRASK. Yes sir.

MR. CALL. Same objections.

A. No, I had no notice from them.

Q. 18. By MR. TRASK. But at the time you received the deed from the railroad company, you did have notice?

MR. CALL. Same objections.

A. This suit, I think, had been begun. But I pur-

chased the land of Bent and Rowan in July, 1889, and received from them an assignment of their contract.

Q. 19. By MR. TRASK. Where is that contract?

MR. CALL. Same objections.

A. It was surrendered to the Southern Pacific Railroad Company in exchange for this deed. I have the Abstract showing the date of that contract.

Q. 20. By MR. TRASK. You may give the date.

MR. CALL. Same objections.

A. (Referring to abstract.) Southern Pacific Railroad Company to H. K. W. Bent, dated June 24, 1885.

Q. 21. By MR. TRASK. That was assigned to you upon what date?

MR. CALL. Same objections.

A. That was assigned to me on the 2nd day of July, 1889.

Q. 22. By MR. TRASK. That is the same land described in this deed which has been offered in evidence?

MR. CALL. Same objections.

A. Yes sir.

Q. 23. By MR. TRASK. You paid the purchase price to Bent and Rowan before you had any knowledge or notice of the rights of the Government in and to this land?

MR. CALL. Same objections.

A. Yes sir.

Q. 24. By MR. TRASK. You can describe the condition of this land at the present time.

MR. CALL. Same objections.

A. One half of the land is in young orchard, and the entire tract is fenced with rabbit-proff fence, and water is ditched and flumed all over the land.

Q. 25. By MR. TRASK. You are in possession of the land now?

MR. CALL. Same objections.

A. Oh Yes; that is, my successors. It is a company that owns the land.

MR. TRASK. That is all.

MR. CALL. That is all. We waive the signature of the witness to the deposition.

Adjourned to December 27, 1893, at 11:30 A. M.

G. 84. (4-15-91-500.)

DEED No. 4687.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thou-

sand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees, and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

And whereas, on the 24th day of May, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the re-

maining trustee under said conveyance, did, pursuant to the terms of his trust nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that, for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their name by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute, and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company contracted to sell the lands hereinafter described, pursuant to the foregoing conditions, to H. K. W. Bent, for the sum of

eight hundred ($800.00) 00-100 dollars, which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, in part by the said H. K. W. Bent, and the remainder by his assignee, Nathan Cole, Jr;

Now, therefore, in consideration of the premises, and the said sum of eight hundred ($800.00) 00-100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Nathan Cole, Jr., of the County of Los Angeles, State of California, and to his heirs and assigns, the following described tract of land, situate, lying and being in the County of Los Angeles, and State of California, to wit: The North half (N. ½) of Section No. Thirteen (13) in Township Five (5) North, of Range Eleven (11) West, San Bernardino Base and Meridian, containing three hundred and twenty (320.00) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since July 24th, 1885, the said purchaser having heretofore agreed with the Company to pay the same, and also reserving all claim of the United States to said tract as mineral land.

To have and to hold the aforesaid premises, to the said Nathan Cole, Jr., his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate

seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals this seventh day of January, A. D. 1892.

(Seal.) CHAS. F. CROCKER,
Pres. S. P. R. R. Co.
J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, (Seal.)
GERRIT L. LANSING, (Seal.)
Trustees,
By JEROME MADDEN,
Their Joint Attorney-in-Fact.

State of California,
City and County of San Francisco.—ss.

On this seventh day of January, in the year one thousand eight hundred and ninety-two (1892), before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Chas. F. Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Seal.) E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

(Endorsed): 5. Ex. 109. 118 S. Broadway. S X. Deed No. 4687. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to Nathan Cole, Jr. Deed. Dated January 7th, 1892. Recorded at request of Nathan Cole, Jr., Jan. 13, 1892, at 6 min. past 11 a. m., in Book 342, page 75, of Deeds, Los Angeles County Records, J. A. Kelly, County Recorder. By W. F. X. Parker, Deputy. Fees, $2.40. S. 15.

U. S. Cir. Court, Southern District California, U. S. of A. vs. S. P. R. R. Co. et als., 184. Master's and Examiner's Exhibit, No. 109, E. H. Lamme, Master and Examiner in Chancery, for defendant. Filed Feb. 23, 1894, Wm. M. Van Dyke, Clerk.

J. HARPS, called for defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK—

Q. 1. What is your name? A. J. Harps.

Q. 2. Where do you reside? A. San Fernando.

Q. 3. Where were you born? A. Pennsylvania.

Q. 4. You are one of the defendants in this action?

A. I believe so; yes, sir.

Q. 5. Witness shown deed No. 3863, Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, to Jacob Harps, dated October 7, 1887, for the following described lands, situate in the County of Los Angeles, State of California, to wit: the fractional Southwest quarter of Section No. 21, in Township 3 North, Range 15 West, S. B. M., containing 144.97 acres. I will ask you if that is the deed you received for the land you purchased from the Southern Pacific Railroad Company?

MR. CALL—Objected to as incompetent, immaterial, irrelevant, and not the best evidence.

A. Yes, sir.

MR. TRASK—I now offer this deed in evidence.

MR. CALL—Same objections.

Document marked Defendants' Exhibit No. 124, before E. H. Lamme, Examiner.

Q. 6. By MR. TRASK—How much did you pay for this land?

MR. CALL—Same objections.

A. Ten dollars an acre.

Q. 7. By MR. TRASK—Have you paid that amount?

MR. CALL—Same objections.

A. Yes, sir.

Q. 8. By MR. TRASK—To the road? That amounts altogether to something over fourteen hundred dollars?

A. Yes, sir.

MR. CALL—Same objections.

Q. 9. By MR. TRASK—Are you in possession of this land at the present time?

MR. CALL—Same objections.

A. Yes, sir.

Q. 10. By MR. TRASK—Have you improved it?

MR. CALL—Same objections.

A. Yes, sir.

Q. 11. By MR. TRASK—What do the improvements consist of?

MR. CALL—Same objections.

A. Consist of conducting water and setting out trees.

Q. 11. By MR. TRASK—You purchased this from the Railroad Company without any knowledge or notice of the rights of the Government of the United States in and to the land?

MR. CALL—Same objections.

A. I can't say as I did. In the first place I bought it as a claim, supposing it was Government land. Afterwards found out the Railroad Company owned it. And then I applied to the Railroad Company to purchase, and I could not purchase of the Railroad Company.

Q 13. By MR. TRASK—You did purchase of the Railroad Company?

MR. CALL—Same objections.

A. I could not at the time. They said they could not sell it to me for they had not title to it; that as soon as they could get a title they would sell it to me. I made applications several times to the Railroad Company for a sale and they would not sell it to me. Then I was informed that the land had been located prior to the transaction with the Railroad Company, and that I was en-

titled to it from the Government. And so I made applications to the Government for it, and they claimed that I was just about a week too late; that they had sold the property to the Railroad Company and given them a deed.

Q. 14. By MR. TRASK—To the Southern Pacific Railroad Company?

MR. CALL—Same objections.

A. The Southern Pacific Railroad Company had got them and paid for it about a week prior.

Q. 15. By MR. CALL—Who informed you of that?

A. The parties that I applied to the Government for.

Q. 16. The Register of the Land Office, perhaps?

A. Well, I could not say.

Q. 17. By MR. TRASK—Afterwards you bought it of the Railroad Company?

MR. CALL—Same objections.

A. After I found out that the Railroad Company had bought it, then they came and appraised the land and I bought it.

Q. 18. By MR. TRASK—Of the Railroad Company?

MR. CALL—Same objections.

A. Of the Railroad Company.

Q. 19. By MR. TRASK—Supposing that they had a right to sell it to you?

MR. CALL—Same objections.

A. Supposing that they had a right to sell it to me. They claimed they had a patent to it.

Q. 20.—By MR. TRASK—And that the Government didn't have any right to it at that time?

MR. CALL—Same objections.

A. Yes, sir.

MR. TRASK—That is all.

Cross-Examination.

By MR. CALL—

Q. 21. When did you first endeavor to get title to this land as Government land?

A. As Government land, well just a few weeks or few months prior to the time I bought it of the Railroad Company.

Q 22. What year was that?

A. I could not say. What is the date of that? That is 187, is it not?

Q. 23. October, 1887, yes, sir.

A. Well, it was probably in—it must have been in 1887.

Q. 24. How long have you been acquainted with the land?

A. I have been acquainted with the land about nineteen years; owned the land about nineteen years.

Q. 25. That would be about since 1874?

A. I purchased the land in 1876, eighteen years ago. I purchased the land in 1876; that is, I purchased the claim.

Q. 26. How was it occupied before that?

MR. TRASK—Objected to as incompetent, irrelevant and immaterial.

A. There was a party living on it, cultivating it.

Q. 27. By MR. CALL—As a homestead?

MR. TRASK—Same objections.

A. I could not say.

Q. 28. By MR. CALL—Who was living on it, claiming it?

MR. TRASK—Same objections.

A. Valentine Lopez.

Q. 29. By MR. CALL—How long had he lived on the land?

MR. TRASK—Same objections.

A. Well, I could not say that, could not tell how long he did live on it. But I should judge by the trees—there was a few trees set out—that it must have been occupied three or four years probably—there had been trees set on it that long.

Q. 30. By MR. CALL—You first saw him living on the land in 1876?

MR. TRASK—Same objections.

A. 1876.

Q 31. By MR. CALL—What time of the year was it?

MR. TRASK—Same objections.

A. It was March.

Q 32. By MR. CALL—In March, 1876?

MR. TRASK—Same objections.

A. Yes, sir.

Q. 32. By MR. CALL—Was he claiming the land as a homestead or—

MR. TRASK—Same objections.

A. I could not say what he claimed it under. I just bought it of him and he gave me a quit claim deed.

Q. 34. By MR. CALL—Did he claim it as Government land or as railroad land at that time?

MR. TRASK—Same objections.

A. Well, I supposed it was Government land.

Q. 35. By MR. CALL—How did he claim it?

MR. TRASK—Same objections.

A. I could not tell you. He gave me a quit claim deed to it. That is all there was about it. I supposed it was Government land, of course. In a short time I found out it was railroad land.

MR. CALL—That is all.

MR. TRASK—That is all.

The parties hereby waive the signature of the witness to his testimony.

G. 325 (3-4-87-500)

DEED No. 3863.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said

Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct. All of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made, and the purchase money fully paid,

the said Comapny and the said Trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said Deed of Trust;

And whereas, said Deed of Trust further provided that for the sake of convenience in making said conveyances, the said Trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made

in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, one the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Jacob Harps of the County of Los Angeles, in the State of California, for the sum of one thousand four hundred and forty-nine ($1,449.70) 70-100 dollars, which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, Trustees as aforesaid;

Now, therefore, in consideration of the premises, and the said sum of one thousand four hundred and forty-nine ($1,449.70) 70-100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company and the said D. O. Mills and Gerrit L. Lansing, Trustees as aforesaid, do grant, bargain, sell and convey to the said Jacob Harps and his heirs and assigns, the following described tract of alnd, situate, lying and being in the County of Los Angeles, and State of California, to wit: The fractional Southwest quarter (fracl S. W. ¼) of Section No. Twenty-one (21) in Township Three (3) North of Range Fifteen (15) West, San Bernardino Base and Meridian, containing one hundred and forty-four (144.97) 97-

100 acres, according to the United States surveys; together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold, the aforesaid premises, to the said Jacob Harps, heis heirs and assigns, to his and their use and behoof forever.

In testimony whereof the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary pro tem and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals this seventh (7th) day of October, A. D. 1887.

(Seal.)

CHAS. CROCKER,
Pres. S. P. R. R. Co.

FRED'K MADGE,
Sec. S. P. R. R. Co. pro tem.

D. O. MILLS, (Seal).

GERRIT L. LANSING, (Seal).
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-fact.

State of California,
City and County of San Francisco—ss.

On this seventh (7th) day of October, in the year one thousand eight hundred and eighty-seven, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles Crocker, known to me to be the President,

and Fred'k Madge, known to me to be the Secretary pro tem of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principlals, and his own as attorney-in-fact.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Seal) E. B. RYAN,

Notary Public in and for the City and County of San Francisco and State of California.

[Endorsed]: San Fernando Dfts Ex 124, 57. Deed No. 3,863. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Jacob Harps. Deed. Dated October 7th, 1887. Recorded at request of grantee Oct. 14, 1887, at 31 min. past 11 a. m., in Book 342, page 17, of Deeds Los Angeles County Records. Frank A. Gibson, County Recorder. By Arthur Bray, Deputy. Fees, $2.50. Folios, 14.

342. U. S. Cir. Court, Southern District California, U. S. of A. vs. S. P. R. R. Co. et als. 184. Master's and Examiner's Exhibit No. 124, E. H. Lamme, Master and Examiner in Chancery for defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

PABLO LOPEZ, called for the defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK—

Q. 1. What is your name? A. Pablo Lopez.

Q. 2. Where were you born?

A. Born here in this city—San Fernando.

Q. 3. Where do you reside? A. San Fernando.

Q. 4. Are you one of the defendants in this action?

A. Yes, sir.

Q. 5. Have you purchased from the Southern Pacific Railroad Company any lands involved in this action?

MR. CALL—Objected to as incompetent, immaterial, irrelevant and not the best evidence.

A. Yes, sir.

Q. 6. By MR. TRASK—Is your evidence of title from the Southern Pacific Railroad Company in the form of a contract or deed?

MR. CALL—Same objections.

A. Deed.

Q. 7. By MR. TRASK—Have you that deed with you?

MR. CALL—Same objections.

A. No, I have got it torn up, and I am just having an original made up here.

Q. 8. By MR. TRASK—It has been recorded, and you are having a certified copy of the deed from the Southern Pacific Railroad Company to you of this land made?

MR. CALL—Same objections.

A. Yes, sir.

MR. CALL—It is admitted that a copy may be made

of the exhibit offered, to stand in lieu of the original, subject to all objections made.

Said copy to be marked Defendants' Exhibit No. 129, before E. H. Lamme, Examiner.

Q. 9. By MR. TRASK—Will you please describe the land, Mr. Lopez?

MR. CALL—Same objections.

A. It is land in Section 1, Township 2 North, Range 15 West, San Bernardino Base and Meridian.

Q. 10. By MR. TRASK—Containing how many acres?

MR. CALL—Same objections.

A. One hundred and fifty-two and fifty-four one hundredth acres. It is about a mile from San Fernando.

Q. 11. By MR. TRASK—What did you pay for that land?

MR. CALL—Same objections.

A. I don't remember exactly.

Q. 12. By MR. TRASK—About how much?

MR. CALL—Same objections.

A. Four hundred and thirty dollars, or something like that.

Q. 13. By MR. TRASK—The consideration expressed in the deed?

MR. CALL—Same objections.

A. Yes, sir; it is in the deed.

Q. 14. By MR. TRASK—Have you made any improvements on the land?

MR. CALL—Same objections.

A. Not much. I have just plowed up some land. Generally do that every year to put in a crop of hay.

Q. 15. By MR. TRASK—When did you buy it?

MR. CALL—Same objections.

A. I got a deed from the Railroad Company in 1887.

Q. 16. By MR. TRASK—Did you have any knowledge or notice of any rights of the Government of the United States in and to this land at the time you bought it from the Railroad Company?

MR. CALL—Same objections.

A. Not that I know of.

MR. TRASK—That is all.

Cross-Examination.

By MR. CALL—

Q. 17. How much is still owing to the Railroad Company? Anything? A. Nothing.

MR. CALL—That is all.

The parties hereby waive the signature of the witness to his testimony.

DEED No. 859.

Book 267, page 120, Deeds.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D., 1875, send greeting:

Whereas, on the first day of April, A. D., 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series to be designated by the letters of the alphabet commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands with full power to make sales of the same upon such terms and conditions as might from time to time be agreed, upon between the said railroad company and the said trustees; and that when such sales had been made and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds or any other debt or obligation of the said railroad company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that for the sake of convenience in making said conveyances,

the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead to make, execute and deliver all conveyances required of of them, as aforesaid;

And whereas, the said railroad company has sold the lands hereinafter described pursuant to the foregoing conditions to Pablo Lopez, of Los Angeles County, State of California, for the sum of four hundred and six ($406.35) 35-100 dollars, which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees, as aforesaid;

Now, therefore, in consideration of the premises and the said sum of four hundred and six ($406.35) 35-100 dollars, the receipt whereof is hereby acknowlegded, the said Southern Pacific Railroad Company and the said D. O. Mills and Gerrit L. Lansing, trustees, as aforesaid, do grant, bargain, sell and convey to the said Pablo Lopez, and his heirs and assigns, the following described tracts of land, situate, lying and being in the County of Los Angeles, and State of California, to wit:

Lots one (1), two (2), five (5), and six (6), of section one (1), in township two (2) north, of range fifteen (15) west, San Bernardino base and meridian, containing one hundred and sixty-two (162.54) 54-100 acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold, the aforesaid premises to the said Pablo Lopez, his heirs and assigns, to them and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lanisng, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals this eighteenth (18th) day of July, A. D., 1887.

CHAS. F. CROCKER,
Vice-Pres. S. P. R. R. Co.

J. L. WILLCUTT,
[Corporate Seal.] Sec. S. P. R. R. Co.

D. O. MILLS, [Seal.]

GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-fact.

State of California,
City and County of San Francisco,—ss.

On this eighteenth (18th) day of July, in the year one thousand eight hundred and eighty-seven, before me, E. B.

Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also on this the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto, as principals and his own name at attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Notarial Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

A full, true and correct copy of the original recorded at request of Grantee, July 28, 1887, at 59 min. past 10 A. M. Frank A. Gibson, County Recorder. By J. R. McKee, Deputy.

State of California,

County of Los Angeles,—ss.

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in book No. 267, of deeds, page 120, records of Los Angeles County,

and that I have carefully compared the same with the original record.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 30th day of December, 1893.

[Seal.] ARTHUR BRAY, County Recorder.
By W. T. Marchant, Deputy.

[Endorsed]: U. S. Cir. Court, Southern District California. U. S. of A., *vs.* S. P. R. R. Co., et als., 184 Master's and Examiner's Exhibit, No. 129, E. H. Lamme, Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894, Wm. M. Van Dyke, Clerk.

TESTIMONY OF J. M. BLANCHARD.

J. M. BLANCHARD, called for the defendants, being duly sworn, testified as follows:

Direct Examination.

By MR. TRASK.

Q. 1. What is your name? A. J. M. Blanchard.

Q. 2. Where do you reside?

A. It is three miles from Monte Vista, and two miles from Crescenta.

Q. 3. In this county? A. Yes sir.

Q. 4. Where were you born?

A. In the State of Maine.

Q. 5. Are you one of the defendants in this action?

A. Well, I didn't know that I was until lately.

Q. 6. Have you purchased any lands from the Southern Pacific Railroad Company?

MR. CALL. Objected to as incompetent, immaterial and irrelevant and not the best evidence.

A. Yes sir.

Q. 7. By MR. TRASK. Is the evidence of your purchase from them represented by deed?

MR. CALL. Same objections.

A. Yes, sir. That is the deed.

Q. 8. By MR. TRASK. (Witness shown deed No. 2140, Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, trustees, to Jesse Martin Blanchard, dated March 12, 1887.) I will ask you if that is the deed which you received from the Southern Pacific Railroad Company for the lands therein described?

MR. CALL. Same objections.

A. Yes sir, that is the deed.

MR. TRASK. Defendants now offer the deed in evidence and ask that it be marked, Defendants' Exhibit, No. 130, before E. H. Lamme, Examiner.

It is admitted that a copy may be made of said deed, which, when certified by the Examiner, may be filed in lieu of the original, with the same force and effect as though the original, were now filed; subject to the same objections.

Q. 9. By MR. TRASK. The land referred to in said deed is the fractional southwest quarter of section seventeen, township two north, range thirteen west, San Bernardino base and meridian, containing one hundred and fifty-nine acres. Is that the land?

MR. CALL. Same objections.

A. Yes sir.

Q. 10. By MR. TRASK. Did you pay the price for this land mentioned in said deed, to wit: Three hundred and ninety-nine dollars and ninety-five cents?

MR. CALL. Same objections.

A. Yes sir.

Q. 11. By MR. TRASK. You don't owe anything on it now?

MR. CALL. Same objection.

A. No sir.

Q. 12. By MR. TRASK. Have you made any improvements on it?

MR. CALL. Same objections.

A. Yes sir.

Q. 13. By MR. TRASK. About what kind of improvements?

MR. CALL. Same objections.

A. Well, I have got out about eight hundred fruit trees on it.

Q. 14. By MR. TRASK. House?

MR. CALL. Same objections.

A. No, my house is not on it. It is on a little fraction right adjoining it.

Q. 15. By MR. TRASK. At the time you purchased this land from the Southern Pacific Railroad Company and paid them for it, did you have any knowledge or notice of any rights of the Government of the United States in and to it?

MR. CALL. Same objections.

A. No sir.

Q. 16. By MR. TRASK. You supposed the railroad company had a right to convey it to you?

MR. CALL. Same objections.

A. Yes, sir. If I hadn't I should not have bought it from them.

Q. 17. By MR. TRASK. You purchased it in 1887, the time it bears date?

MR. CALL. Same objections.

A. Yes sir.

MR. TRASK. That is all.

MR. CALL. That is all.

DEED No. 2140.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D., 1875, send greeting:

Whereas, on the first day of April, A. D., 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Rail-

road Company in seven series to be designated by the letters of the alphabet commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands with full power to make sales of the same upon such terms and conditions as might from time to time be agreed, upon between the said railroad company and the said trustees; and that when such sales had been made and the purchase money fully paid, the said company and the said trustees should unite in a conveyance

in fee simple of the lands so sold to the purchaser or purchasers thereof which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds or any other debt or obligation of the said railroad company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided that for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under

the power so vested in them, did nominate, constitute and appoint by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead to make, execute and deliver all conveyances required of of them, as aforesaid;

And whereas, the said railroad company has sold the lands hereinafter described pursuant to the foregoing conditions, to Jesse Martin Blanchard, of the County of Los Angeles, in the State of California, for the sum of three hundred and ninety-nine ($399.95) 95-100 dollars, which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now, therefore, in consideration of the premises, and the said sum of three hundred and ninety-nine ($399.95) 95-100 dollars, the receipt of which is hereby acknowledged, the said Southern Pacific Railroad Company and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Jesse Martin Blanchard and his heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to wit: The fractional southwest quarter (frac. S. W. $\frac{1}{4}$) of section seventeen (17), in township two (2) north, of range thirteen (13) west, San Bernardino base and meridian, containing one hundred and fifty-nine (159.98) 98-100 acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United State to the same as mineral land.

To have and to hold, the aforesaid premises to the said Jesse Martin Blanchard, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twelfth (12th) day of March, A. D. 1887.

CHAS. F. CROCKER,
Vice- Pres. S. P. R. R. Co.
J. L. WILLCUTT,
[Seal.] Sec. S. P. R. R. Co.
D. O. MILLS, [Seal.]
GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-fact.

State of California,
City and County of San Francisco,—ss.

On this twelfth (12th) day of March, in the year one thousand eight hundred and eighty-seven (1887) before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument and each of them acknowledged to me that such corporation executed the same; also on this, the day afore-

said, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto, as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed as follows]: Deed No. 2140. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to Jesse Martin Blanchard. Deed, dated March 12th, 1887. Recorded at request of L. A. Abst. Co., April 14, 1893, at 16 min. past 2 P. M., in book 342, page 91, of deeds, Los Angeles County Records. Arthur Bray, County Recorder, By A. A. Bayley, Deputy.

Order No. 28,614.

Arthur Bray, County Recorder:—When recorded, please mail this instrument to Will D. Gould, Temple Block, City. Los Angeles Abstract Co. [Endorsed]: U. S. Cir. Court, Southern District California, U. S. of A. *vs.* S. P. R. R. Co., et als. 184 Master's and Examiner's Exhibit No. 130. E. H. Lamme, Master and Examiner in Chancery. For defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

TESTIMONY OF ALEXANDER COOK.

ALEXANDER COOK, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

MR. REDDING. Q. Have you got a deed for any of the land involved in this action?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes sir.

Q. Please produce it.

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Witness produces two deeds.)

MR. REDDING. We offer in evidence a deed from the Southern Pacific Railroad Co., No. 3062, D. O. Mills and Gerrit L. Lansing, trustees, to M. L. Wicks and Peter Cook, similar in form to the others, dated June 21st, 1887, for all of section one, township six north, of range thirteen west, San Bernardino base and meridian, containing 640 acres.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Deed No. 3062, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to M. L. Wicks and Peter Cook, dated June 21st, 1887, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 6," and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed

hereto, and the original deed returned to the witness.)

MR. REDDING. We next offer in evidence a deed from Peter Cook to Alexander Cook, for the west one-half of section one, township six north, range thirteen west, San Bernardino base and meridian, containing 320 acres, dated November 17th, 1887.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, imaterial and irrelevant.)

(Deed Peter Cook to Alexander Cook, dated November 17th, 1887, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 7," and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed hereto, and the original deed returned to the witness.)

Q. How much money did you pay to Mr. Peter Cook for the lands you purchased from him, and mentioned in this deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Five dollars; it is a quit-claim deed.

Q. Do you mean five dollars an acre, or five dollars for the whole?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. For the whole.

Q. Do you claim to own this land now yourself?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes sir.

Q. Did you purchase it in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and involving a conclusion of law.)

A. I did.

Q. Have you paid all the taxes, State, County, and municipal, which have been levied and assessed on the land since the deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes sir, I have.

Q. Did you have any notice at the time of your purchase of any controversy with reference to this land that existed between the United States and the Southern Pacic Railroad Company?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. None.

Q. Have you occupied this land peacefully and been in peaceable possession of it ever since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes sir, I have.

Q. Did you purchase it in good faith, without notice, and as a bona-fide purchaser?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I did.

Q. And for value received?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes sir.

Cross Examination.

MR. CALL. Where is this land located?

A. In Antelope Valley, Los Angeles County.

Q. Southwest of Lancaster?

A. West, I think.

Q. Have you ever been there?

A. Yes sir, I have.

Q. Do you live there?

A. No sir.

Q. How much is it worth an acre?

A. I don't know.

Q. Is it worth anything?

A. Yes sir, I suppose so.

Q. How much do you suppose it is worth?

A. It has been selling at twelve dollars an acre, similar land.

Q. Did you know by what title the railroad held this land; what their claim was to it?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

Q. You did not know whether they held it under an Act of Congress, then, or not?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. No sir.

Q. You never read the Act of Congress?

(Question objected to by Mr. Redding as incompetent,

immaterial and irrelevant, and not proper cross-examination.)

A. I have not.

Q. Did you ever read the Act of Congress making a grant to the Atlantic and Pacific Railroad?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I have not.

Q. Did you ever examine the United States Land Office records?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. No sir.

Re-direct Examniation.

MR. REDDING. Q. At the time of your purchase did you believe that the person who sold this land to you was the owner thereof?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes sir, I did.

Q. Did the Southern Pacific Railroad Company, through its Land Agent, represent to you that it owned the land that it offered to sell to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. They represented to me that they held a legal right to sell those lands.

Q. That they held the title?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. That they held the title.

Q. Did you purchase the lands believeing in their representations?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. I did, yes sir, and no other representations. I wish to explain my answer on page 29 where I say that I paid $5. for the whole, by stating that the consideration in the deed read $5 for the whole, but that in reality I paid Mr. Peter Cook $5 per acre, or $1,600, for the whole.

ALEXANDER COOK.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER,—No. 6."

DEED No. 3062.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands

lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust, as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series B to F, both inclusive, to consist of five thousand bonds each for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Com-

pany should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said railroad company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one the of trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of

attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said railroad company has sold the lands hereinafter described, pursuant to the foregoing conditions, to M. L. Wicks and Peter Cook, of the County of Los Angeles, in the State of California, for the sum of sixteen hundred ($1600.00) 00-100 dollars, which sum has been by them fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now therefore, in consideration of the premises, and the said sum of sixteen hundred ($1600.00) 00-100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said M. L. Wicks and Peter Cook, and their heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles and State of California, to wit: All of section one (1) in township six (6) north, of range thirteen (13) west,

San Bernardino base and meridian, containing six hundred and forty (640.00) 00-100 acres, according to the United States Surveys together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises, to the said M. L. Wicks and Peter Cook, their heirs and assigns, to them and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twenty-first (21st) day of June, A. D., 1887.

CHAS. F. CROCKER,
Vice-Pres. S. P. R. R. Co.

[Seal of the Southern Pacific Railroad Company.]

J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, [Seal.]
GERRIT L. LANSING, [Seal.]
Trustees.

By JEROME MADDEN,
Their Joint Attorney-in-fact.

State of California,
City and County of San Francisco,—ss.

On this twenty-first (21st) day of June, in the year one thousand eight hundred and eighty-seven (1887) before

me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary of the Corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Notarial Seal.] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: Deed No. 3062. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to M. L. Wicks and Peter Cook. Deed dated June 21st, 1887. Recorded at request of M. L. Wicks, July 11, 1887, at 26 min. past 4 P. M., in book 253, page 294, of deeds, Los Angeles County Records. Frank A. Gibson, County Recorder, By Arthur Bray, Deputy. (Marked Defendants' Exhibit before the Special Examiner, No. 6. Stephen Potter, Special Examiner.)

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER—NO. 7.

This indenture, made the 17th day of November, in the year of our Lord, one thousand eight hundred and eighty-seven, between Peter Cook, party of the first part, and Alexander Cook, the party of the second part: Witnesseth: That the said party of the first part, for and in consideration of the sum of five dollars, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby ackwonledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all that certain lot and parcel of land situate, lying and being in the Antelope Valley, County of Los Angeles, State of California, and bounded and particularly described as follows, to wit: The west one-half of section one (1), township six (6) north, range thirteen (13) west, San Bernardino base and meridian, containing three hundred and twenty acres of land, according to official survey of the United States.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said party of the first part has

hereunto set his hand and seal the day and year first above written.

PETER COOK. [Seal.]

Signed, sealed and delivered in the presence of

W. G. DOZIER.

State of California,

County of Solano,—ss.

On this 27th day of January, in the year one thousand eight hundred and eighty-eight, before me, E. W. Westgate, a Notary Public, in and for the said County of Solano, residing therein, duly commissioned and sworn, personally appeared Peter Cook, known to me to be the same person described in, whose name is subscribed to, and who executed the within instrument, and who acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the town of Rio Vista, County of Solano, the day and year in this certificate first above written.

[Notarial Seal.] E. W. WESTGATE,

Notary Public.

[Endorsed]: Peter Cook to Alexander Cook, deed, dated November 17th, 1887. Recorded at the request of W. F. & Co., Feb. 4, 1888, at 21 min. past 9 A. M., in book 379, page 94, of deeds, Los Angeles County records. Frank A. Gibson, County Recorder, by Arthur Bray, Deputy. Fees 1.10 due. Folio 5.

TESTIMONY OF JEROME MADDEN.

JEROME MADDEN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

MR. REDDING. Q. Where do you reside?

A. In San Francisco.

Q. What is your occupation?

A. I am the Land Commissioner or Land Agent of the Southern Pacific Railroad Company.

Q. How many acres opposite constructed portions of the branch line grant, namely, the grant of March 30, 1871, have been applied for patenting by the Southern Pacific Railroad Company, which applications are now pending and which applications have not resulted in obtaining patents?

(Question objected to by Mr. Call as incompetent, irrevelant and immaterial and not the best evidence.)

A. Up to May 22nd, 1893, the number of acres for which patents had been asked and not been received or since received was 342,270.98 acres.

MR. REDDING. Q. That statement, Exhibit No. 2, sets forth the parties who have purchased patented lands by deed from the Southern Pacific Railroad Company involved in this controversy, does it not?

(Same objection.)

A. It does.

Q. Did you, as the Southern Pacific Railroad Company's Land Agent, represent to those purchasers that the Southern Pacific Railroad Company, one of the defenda-

nts herein, had title and could sell the lands to the purchasers?

(Same objection.)

A. The purchasers made no question about the title in a great many instances, and when they did I exhibited the patent to them and they were entirely satisfied.

Q. Did you exhibit the patent as a bona fide evidence of title in the Southern Pacific Railroad Company?

(Same objection.)

A. I always did, and to those that I did not exhibit the patent I told them that the railroad company had a patent, and in a great many instances they had learned it before they came to buy.

MR. CALL. Q. You are referring to the patented lands?

A. Yes, sir.

MR. REDDING. Q. In each instance set forth in that Exhibit No. 2, where the statement shows that money was received by the Southern Pacific Railroad Company for said deeds, do you know whether or not it is a fact that the money was received by the Land Department?

(Same objection.)

A. It was.

Q. And paid into the treasury of the Southern Pacific Railroad Company?

(Same objection.)

A. It was paid by me into the treasury of the Southern Pacific Railroad Company.

Q. Did these parties in each instance there enumerated buy in good faith and for value received?

(Objected to by Mr. Call as incompetent, irrelevant and

immaterial, and not the best evidence, and involving a conclusion and mere opinion of the witness.)

A. From the way in which they acted I should say that there was not the slightest doubt of their good faith.

Q. Don't you know of your own knowledge that they did pay in good faith?

(Same objection.)

A. They paid in good faith; they bought in good faith. I wish to say that the railroad company, except in a very few cases where it gave quitclaims, did not sell any unpatented lands until 1883, at which time the form of contracts for unpatented lands submitted was drawn up.

Re-Cross-Examination.

MR. CALL. Q. Where were those lands situated on the Mojave River that you spoke of out of which a controversy arose in regard to the Atlantic and Pacific overlap by the Southern Pacific?

A. I did not say there was any controversy about that.

Q. When you make contracts of sale of lands to purchasers, do you furnish them any abstract of title?

A. I do not, except orally.

Q. What do you furnish them in the way of an assurance that taxes are paid on the land?

(Objected to by Mr. Redding as irrelevant, immaterial and incompetent.)

Q. In making sales or contracts of these lands to purchasers, do you know whether the purchasers or any of them referred to in these exhibits examined the terms and conditions of the Act of Congress before they purchased these lands?

(Same objection, and the further objection that the United States Statutes are public laws of the country, and every one is supposed to be informed of their contents and import.)

A. I am sure I do not know.

Q. You don't know whether they did or not?

(Same objection.)

A. I do not know whether they did or not.

Q. Do you know whether they examined the maps of route of the Atlantic and Pacific Railroad Company and orders of withdrawal of lands in the Land Office before they purchased?

(Same objection.)

A. I do not know.

Q. Did you say anything to them about those maps or orders of withdrawal?

(Same objection.)

A. Sometimes, in answer to questions, I have; not very frequently, however, because I was not asked.

Q. Would you consider that a man was a purchaser in good faith who had, after examining the Act of Congress and those maps in the Land Office and orders of withdrawal, purchased those lands of the Southern Pacific Railroad as belonging to the Southern Pacific?

(Question objected to by Mr. Redding as calling for a legal opinion of the witness, and it is not competent evidence. No man can testify what he believes to be the opinion of any other man, and the same is immaterial, incompetent and irrelevant.)

A. In answer to that question, I can only say that I consider that every person who bought from the railroad company bought in absolute good faith.

Q. I asked you if you considered that under those circumstances a purchaser would be a good-faith purchaser. Do you mean to say that?

(Same objection.)

A. Many of them; yes, sir.

Q. How about all of them?

(Same objection.)

A. I can only say that I myself bought unpatented lands from the railroad company, after having read the Act of Congress and after having done all the things that you suggested, and I bought the lands in entire good faith, and I have them yet.

Q. And you think the man would be a good-faith purchaser who would do so?

(Same objection.)

A. Yes, sir.

Q. A bona fide purchaser?

(Same objection.)

A. Yes, sir. I say that becauseI have done it myself.

Q. Do you think a man is a bona fide purchaser who would buy land under a contract which provided that if the party he bought from did not get the title or patent that the contract should be void and money refunded? Would you consider that a bona fide sale?

(Same objection.)

A. Yes, sir. I consider that all the persons who bought from the railroad company, except those who purchased since the institution of this suit, bought in absolutely good faith.

Q. You said that up to 1883, the company did not undertake to sell or contract to sell any lands on the main

or branch line before they had received a patent. Do I understand your statement correctly?

A. That is true.

Q. And after that, then, the company began to make these contracts of sale whether they had a patent or not? Is that correct?

A. There was one of two things to do, either to shut up the Land Office or make contracts for sale of unpatented lands.

Q. In making a sale of lands which were unpatented, in order to protect the proposed purchaser and protect the company and the officers of the company from being guilty of any criminal act in selling something they did not own, that was the reason why it was inserted in the contract that in event the company did not get a patent that the contract should be void? Is that true or is it not true?

(Question objected to by Mr. Redding as not proper cross-examination.)

A. It is not true.

Q. Then what was the reason?

A. The reason is set forth in the contract itself.

Q. That is your idea, that it is?

A. It is my idea that it is. It will show for itself.

Q. After 1883, then, the company undertook to determine for itself what lands were granted to it and what lands they could sell without waiting for a patent?

(Same objection.)

A. They knew, in consequence of the decisions of the Supreme Court and of the United States Circuit Court, that they were fully entitled to all the lands within the twenty-mile limits, except those that came within the ex-

ceptions to the grant, and the company conceived that it had title without patents, and in order to expedite sales and to throw nothing in the way of them, they put that clause in, in my opinion.

Q. Do you think that would expedite sales any to put that clause in the contract?

(Same objection, and the further objection that it is immaterial, irrelevant and incompetent.)

A. That I do not know. They seemed to come in and buy quite freely.

San Francisco, September 22d, 1893.

Cross-Examination of Jerome Madden (Resumed).

MR. CALL. Q. Have you produced a list showing the sales and contracts for sales of the Southern Pacific Railroad Company of lands involved in this suit which have not been patented?

A. I have. Here it is. (Producing.)

Q. Does this list show all the sales made by the Southern Pacific Railroad Company and contracts for sales of these lands in suit herein, so far as unpatented, showing the total price to be paid and the amount which has actually been paid to the company thereon?

A. It does.

MR. CALL. I offer the list in evidence, and ask that the same be marked "Exhibit before the Special Examiner, J."

(The document offered in evidence by Mr. Call, referred to by the witness and endorsed "List of unpatented lands involved in case No. 184, United States vs. S. P. R. R. Co.,

which have been sold by said company," is marked by the Special Examiner "Exhibit before the Special Examiner, J. Stephen Potter, Special Examiner.")

Q. I think you said that some lands had been quitclaimed by the company—a few tracts. Have you produced a list of those?

A. I have. Here it is. (Producing.)

Q. Do these two lists include all the lands which have been sold and contracted to be sold, quitclaimed or otherwise conveyed, of the unpatented lands involved in this case?

A. Yes, sir.

MR. CALL. I offer the list in evidence and ask that the same be marked "Exhibit before the Special Examiner, K."

(The document offered in evidence by Mr. Call, and referred to by the witness, and endorsed, "List of lands involved in case No. 184, United States vs. S. P. R. R. Co., for which quitclaim deeds have been issued by said company," is marked by the Special Examiner "Exhibit before the Special Examiner, K. Stephen Potter, Special Examiner.")

Q. Do those lists correctly set forth the matters therein purported to be shown?

A. They do. They are absolutely correct.

Re-Direct Examination. (Resumed.)

MR. REDDING. Q. Do you know whether or not the amounts on these exhibits that are stated to have been received by the Southern Pacific Railroad Company were paid to it by the parties therein named?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. They or their assignors have paid the amounts.

Q. Has the Southern Pacific Railroad Company received the amounts therein *named to have been paid*?

(Same objection.)

A. It has

Q. Do you know whether or not the amounts were paid by the individuals therein named in good faith?

(Question objected to by Mr. Call as incompetnt, immaterial and irrelevant, and the further objection that the question calls for the opinion of the witness, and is not the best evidence of the matter sought to be adduced.)

A. All the sums therein mentioned were actually paid in good faith.

Q. Do you know whether or not the purchasers herein named, or their assignors, and their assignors, are bona-fide purchasers for value received from the company of the lands involved and for the amounts therein declared to have been paid?

(Same objection.)

A. I know that they are.

JEROME MADDEN.

Defendants' Exhibit before the Special Examiner, No. 9.

Patent No. 1 (Branch Line) Southern Pacific Railroad Company of California.

The United States of America—To all to whom these presents shall come greeting:

Whereas, by the Act of Congress approved July 27th, 1866, and "Joint Resolution" of June 28th, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for postal, military and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed;"

And whereas, it is further provided by said Act, that "whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, or occupied by homestead settlers, or pre-empted, or otherwise disposd of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections and not included in the reserved numbers;"

And whereas, it is further enacted by the twenty-third section of the Act of March 3d, 1871, "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is authorized to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California" by the aforesaid Act of July 27th, 1866;

And whereas, official statements bearing dates May 11th, 1874, and November 13th, 1875, from the Secretary of the Interior have been filed in the General Land Office, showing that the Commissioners appointed by the President, under the provisions of the fourth section of the said Act of July 27th, 1866, have reported to him that the line of said branch railroad and telegraph, from a point in the northwest quarter of section three (3), township two (2) north, range fifteen (15) west, San Bernardino meridian, to a point in the southwest quarter of section four (4), township three (3) south, range one (1) [illegible]t, at San Gargonio Pass, making one hundred miles of road constructed and fully completed and equipped in the manner prescribed by the said Act of July 27th, 1866;

And whereas, it is further shown that copies of the reports of said Commissioners have been filed in the Department of the Interior, with copies of the order of the President of the United States, dated May 9, 1874, and November 8, 1875, of the completion of the above portion of said railroad and telegraph line;

And whereas, certain tracts have been selected under the said Act of March 3d, 1871, by Benjamin B. Redding, Land Agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections dated *January 20th*, 1876, and certified January 28th, 1876, by the Register and Receiver at Los Angeles, California, the said tracts being described as follows, to wit:

* * * * * *

North of base line and west of San Bernadino meridian, Los Angeles District.

Township Four, Range Thirteen.—All of section one, containg six hundred and thirty-two acres and sixty hundredths of an acre; northwest quarter of southwest quarter and southwest quarter of southeast quarter of section eleven, containing eighty acres; east half of section thirteen, containing three hundred and twenty acres; south half of northeast quarter of section fifteen, containing eighty acres.

Township Five, Range Twelve.—Southwest fractional quarter of section thirty-one, containing one hundred and sixty-four acres and forty one-hundredths of an acre.

Township Five, Range Thirteen.—South half of section twenty-five, containing three hundred and twenty acres; all of section thirty-five, containing six hundred and forty acres.

* * * * * *

North of base line and west of San Bernardino meridian. Indemnity thrity miles limits.

Township Four, Range Seven.—South half of section three, containing three hundred and twenty acres; all of section five, containing six hundred and forty-one acres and

ninety-six hundredths of an acre; all of section seven, containing six hundred and eighteen acres and twenty-eight hundredths of an acre; all of section nine, containing six hundred and forty acres; all of section eleven, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; north half of section nineteen, containing three hundred and ten acres and twenty-eight hundredths of an acre; all of section twenty-one, containing six hundred and forty acres; northwest quarter of section twenty-seven, containing one hundred and sixty acres.

Township Four, Range Eight.—All of section one, containing six hundred and thirty-seven acres and fifty-six hundredths of an acre; all of section three, containing six hundred and thirty-seven acres and seventy-two hundredths of an acre; all of section five, containing six hundred and forty-six acres and eigthy-eight hundredths of an acre; northwest quarter of section seven, containing one hundred and sixty-two acres; northeast quarter of section nine, containing one hundred and sixty acres; all of section eleven, containing six hundred and forty acres; all of section thirteen, containing six hundred and forty acres.

Township Four, Range Nine.—Northwest quarter of section three, containing one hundred and sixty acres; all of section five, containing six hundred and forty-six acres and forty-six hundredths of an acre; north half of section seven, containing three hundred and twenty-four acres and forty hundredths of an acre; north half of section nine, containing three hundred and twenty acres.

Township Four, Range Ten.—North half of southwest

quarter and north half of section one, containing four hundred and one acres and eigthy hundredths of an acre; northeast quarter of section three, containg one hundred and sixty-three acres and thrity-six hundredths of an acre; west half of section eleven, containing three hundred and twenty acres.

Township Five, Range Nine.—All of section twenty-five, containg six hundred and forty acres; south half of section twenty-seven, containing three hundred and twenty acres; south half of section twenty-nine, containing three hundred and twenty acres; north half of southwest quarter, north half of southeast quarter and north half of section thirty-one, containing four hundred and seventy-five acres and sixty-eight hundredths of an acre; all of section thrity-three, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

Township Five, Range Ten.—Southwest quarter of section seventeen, containing one hundred and sixty acres; all of section nineteen, containing six hundred and seventeen acres and eighty-four hundredths of an acre; all of section twenty-one, containing six hundred and forty acres; south half of section twenty-three, containing three hundred and twenty acres; south half of section twenty-five, containing three hundred and twenty acres; all of section twenty-seven, containing six hundred and forty acres; northeast quarter of section twenty-nine, containing one hundred and sixty acres; northeast quarter of section thirty-three, containing one hundred and sixty acres; all of section thirty-five, containing six hundred and forty acres.

Township Five, Range Eleven.—Southwest quarter of section three, containing one hundred and sixty acres; all of section five, containing six hundred and seventy-nine acres and forty hundredths of an acre; all of section seven, containing six hundred and fourteen acres and eighty-eight hundredths of an acre; all of section nine, containing six hundred and forty acres; west half of section eleven, containing three hundred and twenty acres; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; northwest quarter of section nineteen, containing one hundred and forty-nine acres and seventy-two hundredths of an acre; northeast quarter of section twenty-one, containing one hundred and sixty acres.

Township Five, Range Twelve.—All of section one, containing eight hundred and forty-one acres and fifty-four hundredths of an acre; all of section three, containing eight hundred and fifty acres and twenty-eight hundredths of an acre; all of section eleven, containing six hundred and forty acres; all of section thirteen, containing six hundred and forty acres; southeast quarter of section fifteen, containing one hundred and sixty acres; east half and southwest quarter of section nineteen, containing four hundred and eighty-one acres and ninety-two hundredths of an acre; northwest quarter of section twenty-three, containing one hundred and sixty acres; all of section twenty-seven, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; northwest quarter and east half of section thirty-one, con-

taining four hundred and eighty-three acres and twenty-five hundredths of an acre; all of section thirty-three, containing six hundred and forty acres.

Township Five, Range Thirteen.—North half of section twenty-five, containing three hundred and twenty acres.

Township Six, Range Eleven.—West half of section nineteen, containing three hundred and twenty-five acres; west half of section twenty-nine, containing three hundred and twenty acres; all of section thrity-one, containing six hundred and forty-one acres and eighty hundredths of an acre; west half of section thirty-three, containing three hundred and twenty acres.

Township Six, Range Twelve.—All of section twenty-five, containing six hundred and forty acres; south half of northwest quarter, southwest quarter and east half of section thirty-five, containing five hundred and sixty acres.

The said tracts, as described in the foregoing pages, from one to eight, inclusive, containing the aggregate area of forty-one thousand one hundred and seventy-eight acres and twenty-three hundredths of an acre (41,178.23-100).

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company, of California, and to its successors and assigns, the tracts of land above described, mineral land excepted.

To have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific

Railroad Company, of California, and to its successors and assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the United States the one hundredth. By the President,

[Seal.] U. S. GRANT.

By D. D. CONE, Secretary.

C. W. HOLCOMB,
Recorder of the General Land Office.

Recorded in Vol. 5, pages 409 to 417, in.

[Endorsed]: Recorded at request of Jerome Madden, Land Agent of the Southern Pacific Railroad Company, December 13th, 1880, at 20 min. past 11 A. M., in book 2 of patents, on page 563 et seq., in Recorder's Office of Los Angeles County, Cal. Chas. C. Lamb, County Recorder, by C. H. Dunsmoor, Deputy. Fees, $8.70.

[Endorsed]: Recorded at request of Wells, Fargo & Co., March 25th, 1881, at 45 min. past 10 o'clock A. M., in book A of patents, on page 444 et seq., records of San Bernardino Co., Cal. A. F. McKenney, Co. Recorder, by S. M. Wall, Deputy. Fees, $8.75.

Defendants' Exhibit before the Special Examiner No. 10.

Patent No. 2 of the Branch Line of the Southern Pacific Railroad Company.

The United States of America—To all to whom these presents shall come greeting:

Whereas, By the Act of Congress approved July 27th, 1866, and "Joint Resolution" of June 28th, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for postal, military and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of said road not sold, reserved or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed;"

And whereas, it is further enacted by the twenty-third section of the Act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company,

of California," is authorized "to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company, of California, by the aforesaid Act of July 27, 1886;"

And whereas, official statements bearing dates May 11, 1874; November 13, 1875; July 22, 1876; March 3, 1877, and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph, from the town of Mojave, in township eleven north, of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma Reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two east, same base and meridian, making three hundred and forty-six miles and ninety-six hundredths of a mile of road constructed and fully completed and equipped in the manner prescribed by said Act of July 27, 1866;

And whereas, it is further shown that copies of the reports of said Commissioners have been filed in the Department of the Interior, with copies of the orders of the President of the United States, dated May 9, 1874; November 8, 1875; July 2, 1876; March 2, 1877, and January 23, 1878, on the completion of the above portion of said railroad and telegraph line;

And whereas, certain tracts have been selected under the said Act of March 3, 1871, by Jerome Madden, Land Agent of the said Southern Pacific Railroad Company, as shown by his original list of selections, dated June 27, 1877, and certified July 2, 1877, by the Register and Receiver at Los Angeles, California, the said tracts being described as follows, to wit:

* * * * * *

North of base line and west of the San Bernardino meridian, California.

Township Two, Range Thirteen.—All of section seventeen, containing six hundred and thirty-nine acres and ninety-eight one-hundredths of an acre; all of section twenty-one, containing three hundred and sixty-seven acres and sixty-eight one-hundredths of an acre; all of section twenty-five, containing six hundred and forty acres; the east half of the northeast quarter and the lots numbered one, two and three of section twenty-seven, containing one hundred and fifty-six acres and thirty-two one-hundredths of an acre; the north half of the northeast quarter and the lots numbered one, two, three and four of section thirty-five, containing one hundred and eighty-one acres and fifty-one one-hundredths of an acre.

Township Two, Range Fourteen.—The lots numbered one, two, three and four, the south half of the southeast quarter and the south half of the southwest quarter of section twenty-one, containing two hundred and sixty-one acres and sixty-eight one-hundredths of an acre; the lots numbered one and two and the northwest quarter of the southwest quarter of section twenty-seven, containing one hundred and nineteen acres and ninety-four one-hun-

dredths of an acre; the east half of the northeast quarter and the lots numbered one, two, three and four of section twenty-three, containing one hundred and sixty-six acres and forty-eight one-hundredths of an acre; all of section thirty-three, containing six hundred and forty acres.

Township Two, Range Fifteen.—The lots numbered one, two, three, four, five and six of section one, containing two hundred and thirty acres and nine one-hundredths of an acre.

* * * * * *

The said tracts of land as described in the foregoing pages, from 2 to 14, inclusive, make in the aggregate the area of (54,315.42) fifty-four thousand three hundred and fifteen acres and forty-two one-hundredths of an acre.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company, of California, and to its successors and assigns, the tracts of land above described, "mineral land" excepted.

To have and to hold, the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company, of California, and to its succesors and assigns, forever.

In testimony whereof, I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this

fourth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the independence of the United States the one hundred and third. By the President,

[Seal.] R. B. HAYES.

By WM. H. COOK, Secretary.

S. W. CLARK,

Recorder of the General Land Office.

Recorded in Vol. 7, pages 86 to 97, inclusive.

[Endorsed]: Recorded at request of C. Cabot, Feb'y 12, 1881, at 45 min. past 3 P. M., in book 2 of patents, page 574, records Los Angeles County. Chas. C. Lamb, County Recorder, by A. N. Hamilton, Dept. $12.70, paid.

[Endorsed]: Recorded at request of C. Cabot, Feby 18th, 1881, at 50 min. past 10 o'clock A. M., in book A of patents, page 412 et seq., records San Bernardino County, State of California. A. F. McKenney, Co. Recorder, by S. M. Wall, Deputy. Fees, $12.75.

[Endorsed]: Recorded at the request of C. Cabot, February 13th, 1881, at 45 min. past 9 o'clock A. M., in book 2 of patents, page 151, records of San Diego County.

Defendants' Exhibit before the Special Examiner, No. 14.

Patent No. 6 of Lands Granted in California to the Southern Pacific Railroad Company, Act March 3, 1871.

The United States of America—To all to whom these presents shall come greeting:

Whereas, By the Act of Congress approved July 27th,

1866, and "Joint Resolution" of June 28th, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for postal, military and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States, have full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office;"

And whereas, it is further enacted by the twenty-third section of the Act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of Califronia is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the

Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company, of California," by the aforesaid Act of July 27, 1866;

And whereas, official statements bearing dates May 11, 1874; November 13, 1875; July 22, 1876; March 3, 1877, and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph from the town of Mojave, in township eleven north, of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma Reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two east, same base and meridian, making three hundred and forty-six miles and ninety-six one-hundredths of a mile of road, has been constructed and fully compleated and equipped in the manner prescribed by the said Act of July 27, 1866;

And whereas, it is further shown that copies of the report of said Commissioners have been filed in the Department of the Interior, with copies of the orders of the President of the United States, dated May 9, 1874; November 8, 1875; July 2, 1876; March 2, 1877, and January 23, 1878, of the completion of the above portion of said railroad and telegraph line;

And whereas, certain tracts have been selected under the Act aforesaid, by Jerome Madden, the duly authorized Land Agent of the Southern Pacific Railroad Company, as

shown by his original lists of selections dated July 12, 1882, and May 14, 1883, and certified July 14, 1882; March 9 and May 25, 1883, by the Register and Receiver at Los Angeles District, California. The said tracts of land lie coterminus to the constructed line of road and are particularly described as follows, to wit:

North of base line and west of San Bernardino principal meridian, California.

* * * * * * *

Township Two, Range Twelve.—The lots numbered one, two, the east half of the southwest quarter and the southeast quarter of section thirty-one, containing three hundred and twenty-one acres.

Township Three, Range Fifteen.—All of section twenty-one, containing five hundred and ninety-eight acres and seventy-six one-hundredths of an acre.

* * * * * * *

North of base line and west of San Bernardino principal meridian, California.

* * * * * * *

Township Four, Range Eighteen.—The northeast quarter, the lot numbered three and the southeast quarter of the northwest quarter of section nineteen, containing two hundred and thrity-nine acres and seventy-seven one-hundredths of an acre; the northeast quarter of the northeast quarter, the south half of the northeast quarter, the lot numbered one and the fractional south half of section thirty-one, containing four hundred and eighty acres and eleven one-hundredths of an acre.

* * * * * * *

The said tracts of land as described in the foregoing

make the aggregate area of (37,069.97) thirty-seven thousand sixty-nine acres and ninety-seven one-hundredths of an acre.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company, of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing, yet excluding and excepting "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception, according to the terms of the statute, "shall not be construed to include coal and iron lands."

To have and to hold, the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company, of California, and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundred and eighth. By the President,

[Seal.] CHESTER A. ARTHUR.

WM. H. CROOK, Secretary.

S. W. CLARK,

Recorder of the General Land Office.

Defendants' Exhibit before the Special Examiner, No. 18.

Patent No. 9 of Lands Granted by the Act of March 3, 1871, to the Southern Pacific Railroad Company, Los Angeles District, California.

The United States of America—To all to whom these presents shall come greeting:

Whereas, By the Act of Congress approved July 27th, 1866, and "Joint Resolution" of June 28th, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for postal, military and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United Stats have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office;"

And whereas, it is further enacted by the twenty-third section of the Act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company, of California, is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company, of California," by the aforesaid Act of July 27th, 1866;

And whereas, official statements bearing dates May 11, 1874; November 13, 1875; July 22, 1876; March 3, 1877, and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph from the town of Mojave, in township eleven north, of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma Reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two east, same base and meridian, making three hundred and forty-six miles and ninety-six one-hundredths of a mile of road, has been constructed and fully completed and equipped in the manner prescribed by the said Act of July 27, 1866;

And whereas, it is further shown that copies of the report of said ommissioners have been filed in the Department of the Interior, with copies of the orders of the Presi-

dent of the United States, dated May 9, 1874; November 8, 1875; July 2, 1876; March 2, 1877, and January 23, 1878, of the completion of the above portion of said railroad and telegraph line;

And whereas, certain tracts have been selected under the Act aforesaid, by Jerome Madden, the duly authorized Land Agent of the Southern Pacific Railroad Company, as shown by his original lists of selections, dated June 27, 1877; May 14, 1883; April 7, May 17, and June 27, 1884, and certified July 2, 1877; May 25, 1883, and April 16, May 23, and July 19, 1884, by the Register and Receiver at Los Angeles, California. The said tracts of land lie coterminus to the constructed line of road and particularly described as follows, to wit:

* * * * * * *

North of base line and west of San Bernardino principal meridian, California.

* * * * * * *

Township Six, Range Twelve.—The southwest quarter and the south half of the southeast quarter of section twenty-nine, containing two hundred and forty acres; all of section thirty-one, containing six hundred and forty acres.

Township Six, Range Thirteen.—All of section one, containing six hundred and forty acres; all of section three, containing six hundred and forty acres; all of section seven, containing six hundred and forty acres and eighty one-hundredths of an acre; all of section eleven, containing six hundred and forty acres; the south half of section fifteen, containing three hundred and twenty acres; the northwest quarter, the west half of the southwest quarter, and the east half of the southeast quarter of section seven-

teen, containing three hundred and twenty acres; all of section twenty-one, containing six hundred and forty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred and forty acres.

Township Six, Range Fourteen.—All of section one, containing six hundred and forty acres; the northeast quarter of section eleven, containing one hundred and sixty acres; the north half of section thirteen, containing three hundred and twenty acres.

Township Seven, Range Twelve.—All of section fifteen, containing six hundred and forty acres; all of section twenty-one, containing six hundred and forty acres; all of section twenty-seven, containing six hundred and forty acres; all of section thirty-one, containing six hundred and forty-two acres and forty one-hundredths of an acre.

Township Seven, Range Thirteen.—All of section seven, containing six hundred and thirty-six acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; all of section nineteen, containing six hundred and thirty-six acres and six one-hundredths of an acre; all of section twenty-one, containing six hundred and forty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-seven, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-one, containing six hundred and thirty-nine acres; all of section thirty-three, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

Township Seven, Range Fourteen.— * * * (The northwest quarter), the lot numbered one of the southwest quarter, the north half of the lot numbered two of the southwest quarter, and the east half of section seven, containing six hundred acres; all of section nine, containing six hundred and forty acres; all of section eleven, containing six hundred and forty acres; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section twenty-one, containing six hundred and forty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred and forty acres; all of section twenty-seven, containing six hundred and forty acres; the south half of the southwest quarter, the northeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section thirty-three, containing one hundred and sixty acres.

Township Seven, Range Fifteen.— * * * The north half of section thirteen, containing three hundred and twenty acres.

* * * * * * *

The said tracts of land, as described in the foregoing, make the aggregate area of (33,246.21) thirty-three thousand two hundred and forty-six acres and twenty-one one-hundredths of an acre.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns,

the tracts of land selected as aforesaid and described in the foregoing, yet excluding and excepting "all mineral lands," should any such be found, in the tracts aforesaid, but this exclusion and exception according to the terms of the statute "shall not be construed to include coal and iron lands."

To have and to hold, the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company, of California, and to its successors and assigns, forever.

In testimony whereof, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this ninth day of January, in the year of our Lord one thousand eight hundred and eighty-five, and of the independence of the United States the one hundred and ninth. By the President,

[Seal.] CHESTER A. ARTHUR.

M. McKEAN, Secretary.

S. W. CLARK,

Recorder of the General Land Office.

Recorded in Vol. 8, pages 413 to 419, inclusive.

668 At a stated term, to wit: The October term A. D. 1898 of the United States circuit court of appeals for the ninth circuit, held at the court room in the city and county of San Francisco, on Tuesday the second day of May in the year of our Lord one thousand eight hundred and ninety-nine. Present: The Honorable William B. Gilbert, circuit judge; Honorable William W. Morrow, circuit judge; Honorable Thomas P. Hawley, district judge.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
SOUTHERN PACIFIC RAILROAD COMPANY) GEORGE Loomis, et al. } No. 484.

On motion of Joseph H. Call, esquire, special United States attorney, William Singer, jr., esquire, consenting, ordered appeal submitted to the court for consideration and decision on the briefs on file herein.

669 In the United States circuit court of appeals, for the ninth circuit.

THE UNITED STATES OF AMERICA, APPELLANTS,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, George Loomis, et al., appellees. } No. 484.

OPINION.

Appeal from the circuit court of the United States for the southern district of California.

Joseph H. Call, special United States attorney, Wm. Singer, jr., attorney for appellees; Wm. F. Herrin, of counsel.

Before Gilbert and Morrow, circuit judges, and Hawley, district judge.

MORROW, circuit judge:

This suit was brought by the United States against the Southern Pacific Railroad Company, D. O. Mills and Gerritt L. Lansing, trustees in a mortgage executed by the company, and the City Brick
670 Company, in the circuit court for the southern district of California, on May 17, 1890, to quiet the title of the United States to certain tracts of land aggregating about seven hundred thousand acres within the limits of the forfeited grant to the Atlantic and Pacific Railroad Company. By an amended bill filed September 25, 1891, certain other defendants were made parties to the action. These latter defendants, in their answer to the amended bill, set up the title of the Southern Pacific Railroad Company to the lands claimed by them, and alleged that they were bona fide purchasers of said lands for value from the Southern Pacific Railroad Company and its grantees, and as such bona

fide purchasers they were entitled to have the bill dismissed as to them. There was evidence introduced in support of this defense upon the trial of the case, establishing the fact that the Southern Pacific Railroad Company had sold, under contracts and deeds to the defendants brought in by the amended bill, about one hundred and twenty-seven thousand acres of the land in suit, and the decree of the circuit court, after adjudging that the United States was the owner by title in fee simple absolute of the lands described in the bill of complaint, provided that the decree should not "in anywise affect any right which the defendants, or any of them other than the said Southern Pacific Railroad Company, now have or may hereafter acquire in, to, or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of the unearned lands, and for other purposes,' approved March 3, 1887." From this decree the Southern Pacific Railroad Company and the other defendants
671 appealed to this court, where the decree of the circuit court was affirmed (69 Fed., 47), and thereupon the defendants appealed to the Supreme Court of the United States, where the decree was also affirmed (168 U. S., 1, 66). The mandate of the Supreme Court was as follows: "The decree is affirmed in all respects as to the Southern Pacific Railroad Company, as well as to the trustees in the mortgage executed by that company, and also as to the other defendants, subject, however, to the right of the United States to proceed in the circuit court to a final decree as to these defendants." Upon filing this mandate in the circuit court the United States dismissed further proceedings as to certain defendants other than the Southern Pacific Railroad Company and the trustees in the mortgage executed by the company, respecting certain tracts of land, and at the same time moved for a further decree against certain other defendants respecting certain tracts of land claimed by them. The circuit court thereupon rendered a further and final decree as to the rights and interests of such other defendants. With respect to certain defendants claiming lands for which no patents had been issued by the United States, it was adjudged in the decree that they were citizens of the United States and bona fide purchasers of the land claimed by them from and under the Southern Pacific Railroad Company within the meaning of section 5 of the act of Congress approved March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes;" that for these lands the defendants were entitled to make payments to the United States and secure patents from the United States therefor, upon complying
672 with the provisions of the act of March 3, 1887, in that behalf. With respect to certain defendants claiming lands for which patents had been issued by the United States to the Southern Pacific Railroad Company it was adjudged in the decree that they were bona fide purchasers from and under the Southern Pacific Railroad Company, within the meaning of section 4 of said act of Congress approved March 3, 1887, and within the meaning of the act of Congress approved March 2, 1896, entitled "An act to provide for the extension of time

within which suits may be brought to vacate and annul land patents, and for other purposes;" that said lands having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said lands from the railroad company in good faith, the title of the defendants and of their heirs, grantees, and assigns to said lands, was by the decree confirmed.

From this decree the United States has appealed to this court upon the grounds that the circuit court erred in adjudging that the defendants named in the decree were bona fide purchasers of the lands within the meaning of the acts of Congress of March 3, 1887, and March 2, 1896. The decree contains thirty-three sections, the first twelve of which adjudicate upon the titles of those defendants who claim certain specified tracts of land as bona fide purchasers from the Southern Pacific Railroad Company, and for which no patent has been issued by the United States. These lands amount to 43,315.67 acres. The remaining twenty-one sections of the decree adjudicate upon the titles of those defendants who claim certain specified tracts of land as bona fide purchasers from the Southern Pacific Railroad Company, and for
673 which patents have been issued by the United States to the railroad company. These lands amount to 9,284.39 acres, making a total of 52,600.06 acres, the titles to which are involved in this further and final decree.

The opinion of the Supreme Court in this case indicates the precise questions that were to be determined by the circuit court, and the scope and character of its decree. It said:

"One of the objects of this suit was to obtain a decree quieting the title of the United States, not only to the lands claimed by the Southern Pacific Railroad Company, but to those claimed by numerous individual defendants by purchase from or contract with that company. The decree which was passed declares that it is not to 'affect any right which the defendants, or any of them, other than the Southern Pacific Railroad Company, now have or may hereafter acquire in, to, or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March 3, 1887.' Instead of leaving undetermined the matters in dispute between the United States and the defendants other than the Southern Pacific Railroad Company, the circuit court should have determined, by its final decree, what rights those defendants have by virtue of the above act of March 3, 1887 (24 Stat., 556, c. 376), in the lands or any of them now in dispute and claimed by the United States. The effect of the decree is to leave undetermined the question whether the defendants who claim under the Southern Pacific Railroad Company are protected by that or any other act of Congress. The Government was entitled to a decree quieting its title to all the lands described in its pleadings, except those, if any, that are protected, in the hands of claimants, by acts of Congress. (United States v. Winona & St. Peter Railroad, 165 U. S., 463; Winona & St. Peter Railroad v. United States, 165 U. S., 483.) But as the Government has not appealed, the decree can not be reversed for the error of the circuit

court in not finally disposing of the issues between the United States and the individual defendants who claim under the Southern Pacific Railroad Company." (Southern Pacific Railroad v. United States, 168 U. S., 65, 66.)

In the case of the United States v. Southern Pacific Railroad Company, No. 495, decided at the present term of this court, one of the questions considered and determined was as to the right of certain purchasers from the Southern Pacific Railroad Company to have a decree confirming their title under the act of March 2, 1896, where patents to the lands had been issued to the railroad company. It was there held upon
674 the authority of the United States v. Winona Railroad Company (165 U. S., 463, 477) that the purchasers were bona fide purchasers, and were fully protected by the statute. This decision of the Supreme Court is also applicable to the facts in the present case. Within the meaning of the statute as thus construed, the defendants referred to in the last twenty-one sections of the present decree were bona fide purchasers from the railroad company; that is to say, they purchased the land from the company in good faith, believing that they would thereby acquire title to the land. Possessed of this qualification, they were entitled to have their titles confirmed by the decree.

With respect to purchasers of land from the railroad company where no patents have been issued by the United States, the Supreme Court in the Winona case indicates that the same broad construction is to be given to the statute to protect honest transactions between the purchasers and the railroad company. The policy pursued by all the land-grant railroad companies contemplated the settlement of the country by immigrants as the roads were being constructed, and to carry out this policy it was necessary for the railroad companies in many instances to furnish settlers seeking to purchase lands supposed to be railroad lands with some evidence of a right to title in a contract of sale, in advance of the transfer of the title by the United States to the railroad companies by patent. This policy and its practical operation has been known to the public, and has been frequently commented upon by the courts and the officers of the Land Department of the Government in determining the rights of settlers within the limits of the railroad grants. When, therefore, Congress passed the act of March 3, 1887, providing for
675 the adjustment of land grants made by Congress to aid in the construction of railroads, it had this condition of affairs in view, and dealt with it upon the broad principle that the good faith of the parties in making such contracts should be controlling considerations in determining all questions in controversy.

In this view of the act, and applying its provisions to the present case, it is clear that the purchasers mentioned in the first twelve sections of the decree were bona fide purchasers from the railroad company, and as such were entitled to make payments to the United States for the land in dispute and secure a patent therefor as provided by law.

The decree of the circuit court is affirmed.

(Endorsed:) Opinion. Filed October 9, 1899. F. D. Monckton, clerk.

676 United States circuit court of appeals for the ninth circuit. October term, 1899.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
[SOUTHERN PACIFIC RAILROAD COMPANY] GEORGE Loomis et al., appellees. } No. 484.

Appeal from the circuit court of the United States for the southern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed Oct. 9, 1899. F. D. Monckton, clerk.

677 In the United States circuit court of appeals, ninth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
(SOUTHERN PACIFIC RAILROAD COMPANY) GEORGE Loomis et al. } No. 484.

Petition for and order allowing appeal.

To the judges of the United States circuit court of appeals, ninth circuit:

The United States of America conceiving itself aggrieved by the decree made and entered herein on the day of October, 1899, appeals from the said decree to the Supreme Court of the United States and files herewith its assignment of errors, asserted and intended to be urged upon appeal, and it prays that its appeal may be allowed; and further prays, upon this appeal being allowed, that all proceedings in this cause may be stayed pending such appeal.

And your petitioner further prays that the transcript of the record filed in the Supreme Court by the defendants herein upon their appeal heretofore allowed may be used by your petitioner and that your petitioner may be heard thereon in the same manner as if it had filed such record therein.

Dated this 4th day of December, 1899.

JOSEPH H. CALL,
Special Assistant United States Attorney and of Counsel for United States.

678 *Order allowing same.*

The foregoing petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the said Supreme Court by the defendants herein upon their appeal heretofore allowed may be used by the United States, and that this appeal of

the United States may be heard thereon, and to the end that a full and complete transcript of the record shall be made and transmitted to said Supreme Court, the clerk of this court shall make and transmit to the said Supreme Court those parts of the record which the parties to this cause by their respective counsel have stipulated should be printed upon the hearing in this court as being necessary for consideration, in accordance with the said stipulation on file in this cause, together with the said stipulation and those parts of the record pertaining to the present appeal of the United States and all other proceedings subsequent to the filing of *said stipulation designating the parts of the record to be printed.*

Dated this day December, 1899.

679 In the United States court of appeals, ninth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
(SOUTHERN PACIFIC RAILROAD COMPANY) GEORGE Loomis et al. } No. 484.

Assignment of errors of United States, appellant.

The United States in connection with its petition for appeal herein presents and files therewith its assignment of errors, as to which matters and things it says that the decree entered herein on the day of October, 1899, is erroneous, to wit:

1. The court erred in adjudging that defendants, other that the Southern Pacific Railroad Company, or any of them is a bona fide purchaser from and under said Southern Pacific Railroad Company, within the meaning of the act of Congress of March 3, 1887, or act of Congress of March 2, 1896, of the lands described in said decree, or any of them.

2. The court erred in refusing to adjudge that the United States is the owner by title in fee simple absolute of all of the lands described in said decree.

3. The court erred in adjudging that defendant Jackson A. Graves is a bona fide purchaser of the lands confirmed to him by said decree, or any of them.

4. The court erred in adjudging that those defendants who purchased lands from the Southern Pacific Railroad Company subsequent to
680 November 22, 1889, the date of commencement of the suit of United States vs. Southern Pacific Railroad Company, the decision of the Supreme Court, *in* which case is reported in 146 U. S., 615–619, were not affected and charged thereby with notice of the right and title of the United States to the lands within the limits of the grant of the Atlantic and Pacific Railroad Company.

5. The court erred in refusing to adjudge that those defendants who purchased lands from the Southern Pacific Railroad Company subsequent to July 6, 1886, the date of the approval of the act of Congress forfeiting the lands and rights to lands granted to the Atlantic and Pacific Railroad Company and restoring said lands to the public domain, were not charged thereby with notice of the right and title of the United States to said lands.

6. The court erred in refusing to adjudge that those defendants who purchased unpatented lands from the Southern Pacific Railroad Com-

pany by executory contracts, where only a part of the purchase price was paid, which contracts recited in effect that the railroad company had not yet secured a patent or title to said lands, and that if it failed to do so, that the company would refund the money paid by the purchaser, were not affected and charged thereby with notice of the right and title of the United States to said lands.

7. The court erred in adjudging that any defendant who proposed by his so-called contracts to purchase unpatented lands from the Southern Pacific Railroad Company, in the event that patents were procured from the United States to said company, and to pay for such lands in installments is a "purchaser" within the meaning of said act of March 3, 1887, or the act of March 2, 1896, it appearing that the procurement of
681 patent from the United States was a condition precedent to said sale.

8. The court erred in adjudging that any of said defendants who purchased any of said lands from the Southern Pacific Railroad Company subsequent to the passage of said act of March 3, 1887, is a bona fide purchaser, or entitled to any of the benefits of said act or any act amendatory or supplemental thereto.

9. The court erred in adjudging that those defendants who purchased lands from the Southern Pacific Railroad Company subsequent to the promulgation of the decision of the Secretary of the Interior in the case of Gorden vs. Southern Pacific Railroad, 5 L. D., 691, viz, on June 7, 1887, were not affected and charged with notice thereby that the lands and rights to lands in California, granted to the Atlantic and Pacific Railroad Company, were restored to the public domain by the act of Congress of March 6, 1886.

10. The court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands while the former suits, reported in 146 U. S., 615–619, were pending, were not bound by the adjudications in those cases.

11. The court erred in adjudging that any executory contract for the sale of land made by the Southern Pacific Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

Wherefore, the United States prays that said decree may be reversed in said particulars and that the United States may be granted the relief sought.

JOSEPH H. CALL,
Special Assistant United States Attorney,
and of Counsel for the United States.

682 (Endorsed:) Petition for appeal of U. S., assignment of errors, &c. Filed Dec. 4, 1899. F. D. Monckton, clerk, U. S. circuit court of appeals for the ninth circuit.

683 At a stated term, to wit, the October term, A. D. 1899, of the United States circuit court of appeals for the ninth circuit, held at the court room, in the city and county of San Francisco, on Monday, the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-nine. Present: The Honorable William W. Morrow, circuit judge; Honorable John J. De Haven, district judge.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
(SOUTHERN PACIFIC RAILROAD COMPANY) GEORGE Loomis et al. } No. 484.

The petition for appeal by the United States and prayer for supersedeas are allowed and granted.

And it is further ordered that the transcript of the record filed in the Supreme Court by the defendants herein upon their appeal heretofore allowed may be used by the United States, and that this appeal of the United States may be heard thereon, and to the end that a full and complete transcript of the record shall be made and transmitted to said Supreme Court the clerk of this court shall make and transmit to the said Supreme Court those parts of the record which the parties to this cause, by their respective counsel, have stipulated should be printed upon the hearing in this court as being necessary for consideration, in accordance with the said stipulation on file in this cause, together with the said stipulation and those parts of the record pertaining to the present appeal of the United States and all other proceedings subsequent to the filing of said stipulation designating the parts of the record to be printed.

684 United States circuit court of appeals for the ninth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
(SOUTHERN PACIFIC RAILROAD COMPANY) GEORGE Loomis et al., appellees. } No. 484.

Certificate of clerk C. C. A. to transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing six hundred and eighty-three (683) pages, numbered from one (1) to six hundred and eighty-three (683), inclusive, and comprised in the two preceding volumes, to be a full, true, and correct copy of the transcript of the record printed pursuant to the stipulation of counsel for the respective parties, the order of submission, the opinion, the decree, the petition of the United States for an appeal to the Supreme Court of the United States, the assignment of errors filed therewith, and the order allowing the appeal to the Supreme Court of the United States, as the originals thereof appear of record in my office in the above-entitled cause, and that the same together constitute the transcript of record on appeal to the Supreme Court of the
685 United States in the above-entitled cause, in accordance with the order allowing the appeal of the United States, and as requested and approved by the special United States attorney.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 21st day of December, A. D. 1899.

[SEAL.] F. D. MONCKTON, *Clerk.*

686 UNITED STATES OF AMERICA, *88:*

CITATION.

To George Loomis, the City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited; Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. N. Benham, Jessie Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunnell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentress, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Gretqn, W. F. Grosser, D. J. Haines, Merman Maines, James H. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D.
687 Hoffman, August Hoelling, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealy, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, John Robarts, and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased; George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathison, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Sherman,

Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson,
688 H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood, and Jackson A. Graves,

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within sixty days from the date hereof, pursuant to an appeal allowed on behalf of the United States in open court on the fourth day of December, A. D. 1899, in the United States circuit court of appeals, ninth circuit, wherein the United States is plaintiff and appellant and you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this fourth day of December, A. D. 1899.

WM. W. MORROW,
United States Circuit Judge and Presiding Judge of the United States Circuit Court of Appeals, Ninth Circuit.

689 A copy of this citation was served on me on December 9th, 1899.

WM. SINGER, JR.,
Atty. for Defendants (Appellees).

(Indorsed:) No. 484. In the Supreme Court of the United States. United States *vs.* George Loomis et al., citation on appeal of the United States to Supreme Court U. S. Filed December 14, 1899. F. D. Monckton, clerk U. S. circuit court of appeals, for the ninth circuit.

690 (Indorsement on cover:) File No., 17610. U. S. C. C. of Appeals, 9th circuit. Term No., 186. The United States, appellant, vs. The Southern Pacific Railroad Company, George Loomis, et al. Filed January 15, 1900.

○

Supreme Court of the United States

October Term, 1939

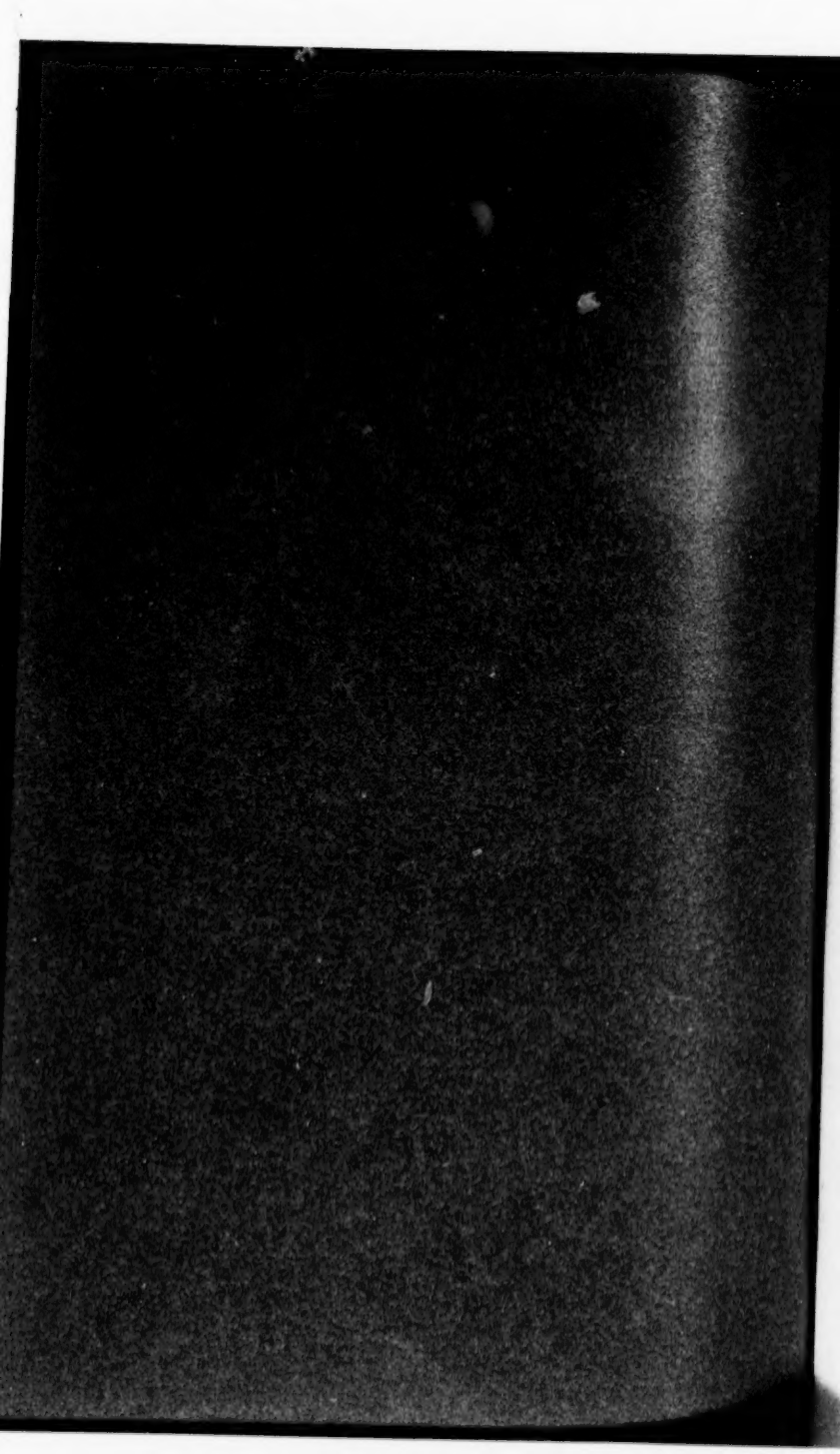
No. 456

Appeal from United States Circuit Court of Appeals
Ninth Circuit

United States,
Appellant
vs.
Southern Pacific Railroad Company,
George Lemmon et al.,
Appellees

Brief for United States

By JOSEPH R. CALL,



CONTENTS.

PAGES

Statement of the case 3–8

Assignment of errors 9, 10

POINTS AND AUTHORITIES.

(1) What has been decided upon former appeal is the law of the case 11–16

(2) Purchasers with notice of adverse claims of Government not bona fide 16–31

(3) Defendant Graves not a bona fide purchaser 32–43

APPENDIX (1).

Acts of Congress 44–49

APPENDIX (2).

Table of dates in former appeal, case 71, October term 1897, 168 U. S., 1 49–54

APPENDIX (3).

Table of land sales 54–58

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1900.

No. 186.

UNITED STATES,
Appellant,
vs.
(SOUTHERN PACIFIC RAILROAD COMPANY),
GEORGE LOOMIS, et al.,
Appellees.

Appeal From the United States Circuit Court of Appeals, Ninth Circuit.

Brief for United States.

Statement.

This suit, which is a continuation of the suit of the United States against the Southern Pacific Railroad Company, and numerous other defendants claiming to be purchasers of certain tracts of lands (see 168 U. S., 1), was brought in the year 1890 to quiet title to some seven

hundred thousand acres of land within the limits of the forfeited grant to the Atlantic & Pacific Railroad Company, and claimed by the defendants by virtue of certain junior grants made to the Southern Pacific Company.

The case is now before the court for the second time, it having been before brought up on appeal by the Southern Pacific Company and the other defendants (see 168 U. S., 1–66), and is now before the court upon appeal by the United States from the supplemental decree of the Circuit Court of August 5, 1898, entered in alleged pursuance of the mandate of this court authorizing a final decree against certain defendants.

Upon appeal by the United States to the Circuit Court of Appeals for the Ninth Circuit, that court affirmed the decree of the Circuit Court.

The bill of complaint of the United States against the Southern Pacific Railroad Company was filed in the Circuit Court May 17, 1890 [record 89–101], defendant was served with subpœna May 19, 1890 (record 102), and thereafter and on September 25, 1891, an amended bill was filed in which numerous persons other than the railroad company were made parties defendant, who claimed to be purchasers of certain tracts of land from the railroad. [record 103–122.]

The answer of all the defendants to the amended bill was filed March 14, 1892 [record 122], and was amended June 12, 1893, which answer denied the title of the United States to the lands and alleged that the lands had been granted to the Southern Pacific Railroad Company by Congress. [record 148.]

The case was heard upon the merits in the Circuit Court, and a decree was there entered containing the following adjudications:

"That the United States of America is the owner by title in fee simple absolute of all the sections of land * * * ." (Describing all of the lands for which suit was brought.)

"And the defendants are and each of them is forever enjoined and restrained from chopping upon or carrying from said lands any trees, timber or wood, *and from claiming or asserting any right, title or interest in or to the said lands or any thereof.*"

The decree also annulled all patents issued by the United States to the Southern Pacific Railroad Company for any of said lands.

The decree also provided as follows:

"nor shall this decree in anywise affect any right which the defendants or any of them, *other than the said Southern Pacific Railroad Company*, now have or may hereafter acquire in, to or respecting any of the lands hereinbefore described in virtue of the act of Congress entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes. Approved March 3, 1887." [rec. 187–189.]

From this decree, affirmed by the Circuit Court of Appeals, the Southern Pacific Company and the other defendants appealed to this court, with the result that the decrees of the courts below were affirmed in accordance with the opinion in 168 U. S., 1–66, and the mandate of the court provided as follows:

"*The decree is affirmed in all respects as to the Southern Pacific Railroad Company as well as to the trustees in the mortgage executed by that company; also as to the other*

defendants, subject, however, to the right of the United States to proceed in the Circuit Court to a final decree as to these defendants." [record 16–18.]

Of the 700,000 acres of land involved in this suit, for which decree was entered against the Southern Pacific Railroad Company and the trustees of the mortgage bonds, and affirmed as against them in all respects by this court (168 U. S., 1–66), it appears that the greater part have never been sold or contracted to be sold by the railroad company. The answer of that company alleged that of the lands sued for by the Government, 120,769 acres had been sold or contracted to be sold by the Southern Pacific Company, prior to commencement of the suit.

Although a large part of the purchasers were made parties defendant in this cause, the defendants appeared and made proof of purchase from the railroad company of only 52,600 acres, of which amount 9,284 acres were patented by the United States to the Southern Pacific Company, and 43,315 acres remained unpatented.

It appeared to be impracticable to secure a final adjudication as to the purchasers in the Circuit Court, excepting as to those who had appeared and made proof of purchase from the railroad company, and therefore, in order that the bulk of the lands included in the decree against the railroad company might be relieved from an apparent litigation and be restored to public settlement, and in order that the Interior Department might proceed to adjust the title to those lands as to which proof of purchase had not been made, in pursuance of the act of March 3, 1887, the attorney for

the United States, upon filing the mandate of this court in the Circuit Court, on January 7, 1898, dismissed, without prejudice, further proceedings in this cause as to the defendants other than the railroad company and the trustees of the mortgage bonds, as to certain tracts of land, and at the same time moved for a further decree against the defendants (other than the railroad company and the trustees) as to the remaining tracts of land, amounting to 52,600 acres. [record 19–25.]

Upon submission of the matter the Circuit Court rendered a further and supplemental decree "*as to the rights and interests of defendants other than the Southern Pacific Railroad Company and D. O. Mills and Gerritt L. Lansing, trustees.*" [record 48–70.]

By this decree the Circuit Court adjudged that all of the tracts of land to which the Government sought a further decree was held by defendants who were *bona fide* purchasers from and under the Southern Pacific Railroad Company within the meaning of the Act of Congress of March 3, 1887, or of March 2, 1896. [record 48–70.]

Some of the tracts had been patented by the United States, and as to those tracts the court *confirmed* the title of the defendant purchasers respectively, and others of the lands had not been patented, and as to those the Circuit Court adjudged that the respective purchasers were *bona fide* purchasers within the meaning of Section 5 of the act of Congress of March 3, 1887, and were also citizens of the United States and entitled to procure patents from the United States upon compliance with the provisions of the act of 1887.

By the mandate of this court the decrees of the courts below had been "*affirmed in all respects as to the Southern Pacific Railroad Company*," and under that mandate the Circuit Court was not authorized to proceed further nor in any way against the railroad company or the trustees, and therefore very properly did not by its decree undertake to adjudicate upon any rights of the railroad company or of the trustees to these lands, but limited the scope and effect of its decree to the "*defendants other than the railroad company and the trustees.*"

From this decree of the Circuit Court, affirmed by the Circuit Court of Appeals, the United States has appealed to this court upon the ground that the court erred in adjudging certain purchasers to be *bona fide* purchasers of the lands, within the meaning of said acts of Congress of 1887 and 1896 as specified in the assignment of errors of the United States.

It is stipulated that upon this appeal the record in this court upon the *former appeal* should be used as a part of the record upon this appeal. [record 71, 72.]

But for convenience of the court those parts of the former record have, in pursuance of a stipulation between the parties, been reprinted which it is supposed will be necessary for consideration upon this appeal, the questions and matters decided upon the former appeals having become *the law of the case*. [record 1–12.]

However, the transcript and entire printed record before the court upon the former appeal of the defendants (Southern Pac. R. R. Co. vs. United States, No. 71, October term, 1897) is a part of the record and may be referred to if necessary.

Assignment of Errors.

1. The court erred in adjudging that defendants, other than the Southern Pacific Railroad Company, or any of them is a *bona fide* purchaser from and under said Southern Pacific Railroad Company, within the meaning of the act of Congress of March 3, 1887, or act of Congress of March 2, 1896, of the lands described in said decree, or any of them.

2. The court erred in refusing to adjudge that the United States is the owner by title in fee absolute of all of the lands described in said decree.

3. The court erred in adjudging that defendant Jackson A. Graves is a *bona fide* purchaser of the lands confirmed to him by said decree or any of them.

4. The court erred in adjudging that those defendants who purchased lands from the Southern Pacific Railroad Company subsequent to November 22, 1889, the date of commencement of the suit of United States States vs. Southern Pacific Railroad Company, the decision of the Supreme Court in which case is reported in 146 U. S., 615–619, were not affected and charged thereby with notice of the right and title of the United States to the lands within the limits of the grant of the Atlantic and Pacific Railroad Company.

5. The court erred in refusing to adjudge that those defendants who purchased lands from the Southern Pacific Railroad Company subsequent to July 6, 1886, the date of the approval of the act of Congress forfeiting the lands and rights to lands granted to the Atlantic and Pacific Railroad Company, and restoring said lands to the public domain, were not charged thereby with notice of the right and title of the United States to said lands.

6. The court erred in refusing to adjudge that those defendants who purchased unpatented lands from the Southern Pacific Railroad Company by executory contracts, where only a part of the purchase price was paid, which contracts recited in effect that the railroad company had not yet secured a patent or title to said lands, and that if it failed to do so, that the company would refund the money paid by the purchaser, were not af-

fected and charged thereby with notice of the right and title of the United States to said lands.

7. The court erred in adjudging that any defendant who proposed by his so-called contracts to purchase unpatented lands from the Southern Pacific Railroad Company, in the event that patents were procured from the United States to said company, and to pay for such lands in installments is a "purchaser" within the meaning of said act of March 3, 1887, or the act of March 2, 1896, it appearing that the procurement of patent from the United States was a condition precedent to said sale.

8. The court erred in adjudging that any of said defendants who purchased any of said lands from the Southern Pacific Railroad Company subsequent to the passage of said act of March 3, 1887, is a *bona fide* purchaser, or entitled to any of the benefits of said act or any act amendatory or supplemental thereto.

9. The court erred in adjudging that those defendants who purchased lands from the Southern Pacific Railroad Company subsequent to the promulgation of the decision of the Secretary of Interior in the case of Gordon vs. Southern Pacific Railroad, 5 L. D., 691, viz, on June 7, 1887, were not affected and charged with notice thereby that the lands and rights to lands in California, granted to the Atlantic and Pacific Railroad Company, were restored to the public domain by the act of Congress of March 6, 1886.

10. The court erred in refusing to adjudge that the Southern Pacific Railroad Company and those in privity with that company, who contracted to purchase lands, while the former suits, reported in 146 U. S., 615–619, were pending, were not bound by the adjudications in those cases.

11. The court erred in adjudging that any executory contract for the sale of land made by the Southern Pacific Railroad Company is valid as to any payment made thereon after notice to the purchaser of the rights of the United States.

First Point.

WHATEVER HAS BEEN DECIDED UPON THE FORMER APPEALS CONCERNING THE RESPECTIVE CLAIMS AND RIGHTS OF THE PARTIES TO THIS SUIT CANNOT BE RE-EXAMINED ON THIS SECOND APPEAL. Adjudications had and rulings made in the former appeals are now the law of the case, and as to what was adjudged can best be determined by reference to the mandates and opinions.

In Thompson vs. Maxwell Land Grant Company, 168 U. S., 451, at page 456, the court said:

"It is the settled law of this court, as of others, that whatever has been decided on one appeal or writ of error cannot be re-examined on a second appeal or writ of error brought in the same suit. The first decision has become the settled law of the case." Supervisors vs. Kennicott, 94 U. S., 498, and cases cited in the opinion: Clark vs. Keith, 106 U. S., 461; Chaffin vs. Taylor, 116 U. S., 567; Northern Pacific Railroad vs. Ellis, 144 U. S., 458; Great Western Telegraph Company vs. Burnham, 162 U. S., 339–343.

An examination of the opinion (see 168, U. S., 1–66) will show that the court decided that the issues in the case had been finally determined in the cases in 146 U. S., 570, 615, 619, *as to the Southern Pacific Railroad Company*, and the trustees of mortgage bonds, and that upon the merits of the whole case the Government was entitled to a decree as to the remaining defendants, except as to such tracts of land as may have been confirmed to them or protected in their hands by the acts of Congress of 1887 and 1896. (see appendix for acts.)

Concerning the situation of the lands embraced in this suit, the court said [168 U. S., 46, 47]:

"The lands now in controversy are situated opposite to and are co-terminous with the first, second and fourth sections of the Southern Pacific Railroad as constructed between 1873 and 1877, inclusive, and within the primary and indemnity limits of the grant to the Southern Pacific Railroad Company made by the 23rd section of the Texas and Pacific act of March 3, 1871; the 61,939.62 acres patented to that company being opposite to the first and fourth sections of its road. It may be said that the lands here in dispute belong to one or the other of the following classes: Lands within the common granted limits of both the Atlantic & Pacific grant of 1866 and the Southern Pacific grant of 1871; lands within the granted limits of the Southern Pacific grant and the indemnity limits of the Atlantic & Pacific grant; lands within the Southern Pacific indemnity limits and the Atlantic & Pacific granted limits; lands within the common indemnity limits of both grants. Of those in dispute, 219,012.93 acres have not been surveyed by the United States."

"But all the lands now in dispute are within the limits of the grant to the Atlantic and Pacific Railroad Company, *if* the maps filed by that company in 1872, and which were approved by the Land Department, are to be regarded as maps of definite location. This is substantially admitted to be a correct statement of the *controlling question* before the court; * * * *

As to the new evidence introduced which was not in the cases in 146 U. S., 570, 615, 619, the court said (see 168 U. S., p. 62):

"Even if we were prepared upon a re-examination of the former cases, or upon the showing made by the present record, to hold that the maps of 1872 were not valid maps of definite location, we could not for that reason, in this proceeding, go behind the former adjudication. * * * ."

And at page 65 the court said :

"*We cannot concur in the view that the evidence upon this branch of this case is of such nature as to compel the court, in the interest of truth and justice, not only to consider it, but to pass again upon the issue made in the former suits as to the character of the maps of 1872. Whatever is new in the evidence now before us, touching that matter, is simply cumulative on the one side or on the other.*"

The court, therefore, adjudged in this case as in the former cases that a valid grant was made to the Atlantic & Pacific Railroad Company by the Act of Congress of 1866, and that it was forfeited to the United States by the act of 1886, and that the operative effect of the forfeiture act was to restore these lands to the public domain without the Southern Pacific Railroad Company having acquired any interest in them that affected the power of the United States to forfeit and restore them to the public domain.

It was also adjudged that the grants to the Southern Pacific Company did not operate upon the lands appertaining to the Atlantic & Pacific grant.

The Circuit Court had adjudged that the decree was not to affect any rights which the defendants other than the railroad company had or might acquire to the lands under the act of Congress of March 3, 1887.

That act provided in effect that *bona fide* purchasers of lands erroneously *patented* to a railroad company could procure a second patent from the Government upon making proof of *bona fide* purchase, and that *bona fide* purchasers of *unpatented lands* sold by the company as a part of its grant, but which were excepted from the grant, could *purchase* the lands from the

United States by paying the ordinary Government price.

It was supposed when the decree of the Circuit Court was passed that the power to determine who were qualified purchasers of these lands and to pass upon the proofs as to the *bona fides* of the transactions was a matter exclusively within the jurisdiction of the Interior Department, and consequently the decree saved to such purchasers whatever rights they had, if any under that act.

After the decree in the Circuit Court was entered Congress passed the act of March 2, 1896, *confirming* the titles of *bona fide* purchasers of lands patented to the railroad, which has properly been treated as an amendment of the act of 1887.

Commenting upon the action of the Circuit Court in saving the rights of the purchasers under the act of 1887, the Court said (see p. 65):

"One of the objects of this suit was to obtain a decree quieting the title of the United States, not only to the lands claimed by the Southern Pacific Railroad Company but to those claimed by numerous individual defendants by purchase from or contract with that company. The decree which was passed declares that it is not to affect any right which the defendants, or any of them, other than the Southern Pacific Railroad Company, now have or may hereafter acquire in, to, or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled, 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes,' approved March 3, 1887. *Instead of leaving undetermined the matters in dispute between the United States and the defendants, other than the Southern Pacific Railroad Company, the*

Circuit Court should have determined, by its final decree, what rights those defendants have by virtue of the above act of March 3, 1887, 24 Stat., 556, c. 376, in the lands or any of them now in dispute and claimed by the United States. The effect of the decree is to leave undetermined the question whether the defendants who claim under the Southern Pacific Railroad Company are protected by that or any other act of Congress. *The Government was entitled to a decree quieting its title to all the lands described in its pleadings, except those, if any, that are protected, in the hands of claimants, by acts of Congress.* United States vs. Winona & St. Peter Railroad, 165 U. S., 463; Winona & St. Peter Railroad vs. United States, 165 U. S., 483. But as the Government has not appealed, the decree cannot be reversed for the error of the Circuit Court in not finally disposing of the issues between the United States and the individual defendants who claim under the Southern Pacific Railroad Company.

"*The result is that the decree must be affirmed in all respects as to the Southern Pacific Railroad Company, as well as to the trustees in the mortgage executed by that company, and affirmed also as to the other defendants, subject, however, to the right of the Government to proceed in the Circuit Court to a final decree as to those defendants, and it is so ordered.*"

The particular language to which the attention of the court is invited is that wherein the court said: "*The Government was entitled to a decree quieting its title to all the lands described in the pleadings except those, if any, that are protected in the hands of claimants by acts of Congress.*"

The present defendants were parties upon the record in the former appeal *claiming under the title of the Southern Pacific and not under any other right or title.* The court adjudged that the Southern Pacific acquired no title under the Congressional grants. Consequently

the Government was entitled to a decree against all the defendants except for such lands as were confirmed by the acts of either March 3, 1887, February 12, 1896, or March 2, 1896. (see appendix.)

Second Point.

PURCHASERS WITH NOTICE OF THE ADVERSE CLAIMS OF THE GOVERNMENT TO THESE LANDS, ARE NOT *BONA FIDE* PURCHASERS.

The terms "*bona fide* purchaser" and "purchaser in good faith," employed in the acts of Congress of 1887 and 1896, do not have the definition and significance which is ordinarily given to them.

At common law and in equity a *bona fide* purchaser is, one who purchases for a *valuable consideration*, *without notice* and *in good faith*.

Pom. Eq. Jur., 745.

The two Winona cases (165 U. S., 463 and 483) clearly define the meaning in which these terms were employed in the acts of Congress mentioned.

The first case shows the extent to which one is protected who claims to be a *bona fide* purchaser, and the next case shows that there are limitations upon the rights of the purchaser, and that *all* who purchase from the railroad company, even where they testify that they purchased in good faith, are not within the protection of the acts.

In the absence of these special acts, the purchaser from the railroad would of course be bound to take notice of the power of the officers of the Interior Depart-

ment, of the act of Congress granting these lands to the Atlantic and Pacific Company, and of the maps of definite withdrawal, and executive orders reserving these lands for that company, of record in the Interior Department and in the local land offices, and so in every such case the purchaser of lands from any railroad, which lands are excepted from the grant, would be bound to know that the public laws and records showed that the title was not in the railroad but in the Government.

In such case the chain of title of the grantor of the purchasers would be incomplete in not showing that a conveyance had been made to the railroad.

In the first Winona case (165 U. S., 463, 482) the court decided, that where lands within the limits of the railroad grant had been erroneously patented to the company by the United States, and thereafter the company had sold the lands for a valuable consideration to those who purchased in good faith, that the title of such purchaser was confirmed by the act of March 2, 1896, notwithstanding that under ordinary circumstances the purchasers would be bound to take notice from the laws and public records that there was no title in their grantor, and the court held *that the object of the legislation was to cure the erroneous acts and decisions of the officers of the Interior Department in recognizing the title of the railroad and in issuing patents, upon the faith of which acts and patents the purchaser had relied.*

In the second Winona case (165 U. S., 483, 486) the court decided *that the acts of 1887 and 1896 were intended only to protect the purchaser against the erroneous*

acts of the Interior Department prior to the issuance of patent.

The reason for this construction is obvious.

In withdrawing the lands for the company, and in recognizing its title, and in issuing patents, the officers of the Interior Department had led the purchasers to believe, to their prejudice, that the railroad had title to the lands, but whenever after that the Interior Department *ceased to recognize the title of the railroad*, and from any decision to the contrary or from other act, the purchaser would be bound to know that the title was not in the railroad company, he would be affected with notice, either actual or constructive, of the want of title of his grantor.

If it were not for this limitation upon these acts, the railroad company could continue to sell from the public domain, or from the lands of the United States, any tracts within the limits of its grant, although every department of the Government may have publicly declared that such lands were the property of the United States.

Without applying this common-sense limitation this railroad company could go on and sell to purchasers the National Reservation adjoining Yosemite Park; it could sell and dispose of the United States building and grounds in Los Angeles; and it could convey away to a *bona fide* purchaser the Government Military Reservation at San Pedro; and so it could go on and grant all of the United States property within thirty miles of either side of its road from San Francisco to Yuma, not only this year but next year and every succeeding year.

The limitations of the acts of 1887 and 1896 are clearly pointed out in the Winona cases (165 U. S., 483, at pages 485 and 486), in which the court said:

"That the land was erroneously certified is, under the prior decisions of this court, not open to question; and the acts of 1887 and 1896 have, as indicated in the opinion in the prior case, the purpose of protecting only that party whose purchase from the railroad company must be considered one in good faith. *It is essential to the protection of these statutes that the party purchasing from the railroad company has no notice by any fact subsequent to and independent of the certification or patent of any defect in title. Such a purchaser cannot claim to be one in good faith if he has notice of facts outside the records of the land department disclosing a prior right. The protection goes only to matters anterior to the certification and patent.*"

It is true that the Interior Department withdrew these lands for the Southern Pacific Company as well as for the Atlantic and Pacific Company, and it is also true that by the erroneous action of the Interior Department four patents were issued for portions of these lands, upon the dates respectively, March 29, 1876; April 4, 1879; December 27, 1883, and January 9, 1885.

Under the construction given to these protective acts, purchasers of these lands, in reliance upon these acts of the Interior Department, could have at that time, and until otherwise informed, purchased these lands from the railroad company in good faith, and their title would have been protected and confirmed by the acts of 1887 and 1896.

But in the year 1886 every department of the Government began to operate to protect the title of the United States to these lands, and in every public way gave

notice to the world of the rights of the Government to them.

On July 6, 1886, Congress passed an act declaring that the lands in California granted to the Atlantic and Pacific Railroad Company were *forfeited* and *that they were thereby restored to the public domain.*

That they were so restored by operation of that act was decided in United States vs. Southern Pacific Company, 146 U. S., 570, 619.

That act of Congress was a law of the land, and binding upon every person within the jurisdiction of the United States.

On June 7, 1887, the Interior Department decided, in the case of Gordon vs. Southern Pacific Railroad Company (5 Land Decisions, 691), that the lands granted to the Atlantic and Pacific Railroad Company by the act of 1866, within both granted and indemnity limits, were not operated upon by the subsequent grants to the Southern Pacific Company, and that those lands were, by operation of the act of Congress of July 6, 1886, *restored to the public domain*, and were subject to entry under the settlement laws of the United States.

This decision was made a matter of record in the Interior Department, and published throughout the United States in the official decisions of the Secretary of the Interior.

That decision has been followed and adhered to from that day down to the present time, as appears from the following cases :

Coble vs. Southern Pacific Co., 6 L. D., 679, 812.
Southern Pacific Railroad, 6 id., 816.

Southern Pacific Railroad, 16 id., 317.

Moore vs. Kellog, 17 id., 391.

Union Oil Co., 25 L. D., 351, at page 357.

On November 22, 1889, a Bill of Complaint was filed by the United States against the Southern Pacific Railroad Company and others in the United States Circuit Court, Southern District of California, asserting title to the lands within the limits of the Atlantic and Pacific grant, and the issues in that case, and claims of the respective parties, carried notice to the world that the claims and rights of the respective parties *embraced the whole of the grant* of the Atlantic and Pacific Company in California (Southern Pacific Company vs. United States, 168 U. S., 1), and these issues were determined in favor of the Government, as appears from the decision in that case and in the former cases (United States vs. Southern Pacific Company, 146 U. S., 570, 615, 619).

On May 14, 1890, the present bill of complaint was filed against the Southern Pacific Railroad Company to quiet and determine to title of the United States to these particular lands.

The Southern Pacific Railroad Company, believing that it was more powerful than the Government of the United States, has ignored these acts of Congress, and decisions of the courts, and rulings of the Interior Department, and has continued to make contracts of sale for these lands and to receive money from purchasers from the date of the act of July 6, 1886, and the purchasers of these lands, in equal disregard of the rights of the Government, and of the *published* laws

and notice given them by judicial proceedings and rulings of the interior Department, have continued to purchase these lands and make payments to the railroad company, and now, clothing themselves in the garb of *bona fide* purchasers, seek the protection of this court.

Fortunately for the interests of the Government and of the public, the court has put a proper limitation upon the extent to which such purchasers can claim *bona fides* within the meaning of the acts of 1887 and 1896.

The defendant purchasers, therefore, under the construction given to these statutes, should be chargeable with notice, to the same extent as in other cases, of all that has occurred since the issuance of the patents to the Southern Pacific Company as to patented land, and of all that has occurred as to unpatented land since the Interior Department or acts of Congress, or litigations against the company by the United States, have ceased to recognize any right in the Southern Pacific Company to these lands, and since the Government has, through its various departments, asserted title to them.

As the purchasers are chargeable with notice since those dates, the principle is applicable that one who purchases with notice is not a *bona fide* purchaser.

Simmons Co. vs. Doran, 142 U. S., 417, 435, 437.

Nesbit vs. Riverside, 144 U. S., 610, 618.

Lytle vs. Lansing, 147 U. S., 59.

Sutliff vs. Lake Co., 147 U. S., 230.

The appendix to this brief contains a "table of land sales" showing sales and contracts to sell made by the Southern Pacific Railroad Company, date of contract,

name of purchaser, acreage sold, purchase price, amount paid, and showing whether or not patented.

1. It is submitted that those who purchased or made payments to the railroad after the passage of the act of Congress of *July 6, 1886*, forfeiting to the United States these lands, and *declaring them restored to the public domain*, are affected with notice, and charged by that act with knowledge of the rights of the United States. This statute is a public law of which all must take notice, and it has been twice decided that that act operated to restore these lands to the public domain.

United States vs. Southern Pacific, 146 U. S., 570, 615, 619.

Southern Pacific vs. United States, 168 U. S., 1–66.

2. THE ADJUSTMENT ACT OF MARCH 3, 1887, AS AMENDED BY THE ACTS OF 1896, IS NOT PROSPECTIVE IN ITS OPERATION.

Many of the sales or contracts to sell made by the Southern Pacific Company were made long after the passage of the act of March 3, 1887. [see appendix.]

Curative or legalizing acts such as this are made to remedy some existing defect, and to cure some previous omission, which would otherwise result in injury to a person who in justice should be protected.

Such acts do not have a *prospective* operation unless so declared.

Similar acts have been construed as operating only upon purchases made prior to their passage.

Gilson vs. Robinson, 68 Cal., 539, 543.

Durand vs. Martin, 120 U. S., pp. 372, 374.

The act of 1887 contemplates the protection of

bona fide purchasers who purchased *prior* to the passage of the act, and not as a continuing license to the railroad to sell from the public domain lands of the United States.

Section 4 of the act declares what sales of patented lands are to be operated upon as those lands "which *have been sold* by the grantee company to citizens of the United States.

Section 5 of the act declares, "that where any such company *shall have sold* to citizens of the United States * * * * lands not conveyed to or for the use of such company * * * * and where the lands so sold are for any reason excepted from the operation of the grant," that such purchasers, being *bona fide*, may acquire the land from the United States.

The utmost that can be claimed for this act is that it contemplates an "*immediate adjustment*" of the railroad land grants, as provided in section 1 of the act, and that the act intended to protect those purchasers who purchased at any time prior to such *adjustment*, or prior to the time when such adjustment shall have reached a stage when the Secretary of the Interior shall have decided that the lands were *excepted* from the railroad grant.

It is provided in section 2 of the act, "That if it shall appear upon the *completion of such adjustment* or *sooner* that lands have been from any cause heretofore erroneously certified or patented * * * " that such patents shall be vacated. Therefore, whenever "*it shall appear*" by Interior Department rulings that the land

was excepted from the grant, no one could be misled any longer by erroneous acts.

This seems to have been the construction adopted by the Secretary of the Interior, for it was said by that officer in Andrus vs. Balch, 22 Land Dec., 238, 241, "I am of the opinion that it can make no difference whether the purchase from the company was made before or after the passage of the act of March 3, 1887, if made in good faith, believing the title to be good, *and before the land purchased was held to be excepted from the grant.*"

The present suit was commenced on May 14, 1890, and the former suits were commenced November 22, 1889, and they were all commenced under orders of the Secretary of the Interior, based upon decisions made in 1887 and 1888, in which he determined that the lands within the Atlantic and Pacific grant were excepted from the operations of the grant to the Southern Pacific Company.

As before stated, the first decision of the Secretary of the Interior upon the status of these lands was rendered June 7, 1887, a little more than three months after the passage of the act of March 3, 1887.

Gordon vs. Southern Pacific Company, 5 Land Dec., 691 followed in

Coble vs. same, 6 id., 679.

Southern Pacific Railroad, id., 816,

and was thereafter followed by other decisions before cited.

Even under the construction adopted by the Interior Department, the act would not operate upon sales made after June 7, 1887, and there is no reason why it should.

The object of the act was to protect *bona fide* purchasers from the railroad who bought in reliance upon erroneous acts of the Interior Department in patenting lands or in reserving lands for the benefit of the railroad, and when the Interior Department finally declared that such lands were excepted from the grant to the railroad, the reason for the protection ceased.

Sales made after that date are therefore neither within the *letter* or the *spirit* of the act.

If rulings and decisions of the Interior Department, decisions and decrees of the Federal courts, and acts of Congress cannot, singly or all combined, even so much as charge the purchaser of these lands from the railroad with notice of the rights of the Government, when, it may be asked, will there ever come a time when the rights of the United States will be protected?

The railroad could go on and sell public lands this year, and next year and thereafter for all time to "*bona fide* purchasers."

It is true that public expenses might be somewhat reduced, because there would be no need of maintaining a general land office, or any local land offices, the business of disposing of the public land would all be done through the land departments of the railroads; but however convenient this might be for some people, it is submitted that the continued administration of the public lands was not intended by any act of Congress to be turned over to railroad corporations.

It is submitted that the Circuit Court erred in its decree in protecting those who purchased after March 3, 1887, and clearly as to those who purchased after June 7, 1887.

3. Those who *or made payments* to the railroad after *June 7, 1887*, the date of the promulgation of the decision of the Secretary of the Interior, above cited, adjudging that the lands within the granted and indemnity limits of the Atlantic and Pacific grant were forfeited and restored to the public domain by the act of July 6, 1886, are thereby chargeable with notice of the want of title in the railroad. Those decisions are not only a matter of record in the Interior Department, upon which depends the right and title of the railroad company, but they are also in the nature of executive orders, and are taken judicial notice of by the courts, and, consequently, by the public.

Caha vs. United States, 152 U. S., 211.

Heath vs. Wallace, 138 U. S., 573, at page 584.

4. Those who purchased or made payments to the railroad company after *November 22, 1889*, the date of filing of the amended bill in the United States Circuit Court by the United States against the Southern Pacific Railroad Company (the defendants then being in court), which cases are reported in 146 U. S., 570, 615, 619, in which the right of the United States to the Atlantic and Pacific lands was asserted by the Government and denied by the Southern Pacific Company, are chargeable with notice of the issues presented by that bill.

Upon the issues presented by the pleadings and proofs, (see 146 U. S., 570 and 168, U. S., 1), it had been *finally and conclusively adjudged*, as between the United States and the Southern Pacific Railroad Com-

pany, that a valid grant had been made to the Atlantic and Pacific Railroad Company by the act of 1866, which was definitely established by maps filed in 1872, and that the grant had been forfeited by the act of 1886, *and by operation of that act these lands had been restored to the public domain*, without the Southern Pacific Railroad having acquired any interest in those lands.

The court said also, in 168 U. S., at page 48, "that a right, question, or fact, distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery, cannot be disputed in a subsequent suit between the same parties *or their privies*."

The amended bill in that case (decided in 146 U. S., 615, 619) was filed November 22, 1889 (see 168 U. S., p. 30), and the defendant's answer was filed December 30, 1889 (see 168 U. S., p. 33).

The Southern Pacific Railroad Company, *and those in privity with it*, are therefore bound by the adjudication in that case, and those who purchased after commencement of that suit from the Southern Pacific Railroad Company, basing their claims to lands under these grants to the Southern Pacific Company, are in privity with the railroad company.

The principle is well settled that a third person who purchases a right or an interest in property under litigation from a party to the suit is bound by the judgment entered to the same extent as if a formal party to the record, and in contemplation of law such purchaser is represented by the party from whom he purchased.

Murray vs. Ballou, 1 Johns. Ch., 566.

Whiteside vs. Hazleton, 110 U. S., 296, at page 301.

Union Trust Co. vs. Southern Co., 130 U. S., 565, 571.

It is therefore submitted that those who purchased or made payments after November 22, 1889, are affected with notice of the rights of the United States, and are not *bona fide* purchasers.

5. Those who purchased lands by executory contracts upon partial payments are *bona fide* purchasers only to the amount paid prior to notice.

To constitute a *purchase* there must also be a *payment*, and as to all payments made after notice, as above mentioned, there is no protection extended to the purchaser.

Lytle vs. Lansing, 147 U. S., 59, at page 70.

Where partial payments have been made upon executory contracts, the legal title remains in the railroad company (if not in the Government), which is held until full payment shall be made, and an equitable right remains in the purchaser to the extent of the payments.

Williams vs. United States, 138 U. S., 514, 616.

Jennisons vs. Leonard, 21 Wall., 302, at page 309.

1 Story's Equity Jur., 396.

The United States therefore is entitled to a decree for all the legal and equitable title and interest remaining in the Southern Pacific Railroad as to those patented lands sold by executory contracts upon partial payment, and which are shown in the table of land sales in the appendix and which relief was denied by the courts below.

The Government is entitled to a decree for the interest and title of the Southern Pacific Railroad Company *in those lands* sold after notice to the purchasers, and for the legal title and interest in all those lands upon which *payments* have been made subsequent to such notice.

6. A large part of the lands in suit unpatented were contracted to be sold on partial payments, where only a small part of the purchase price was paid. The form of contract used by the railroad company as to such unpatented lands was the same in each instance, and these contracts provide, among other things, as follows (see Appendix of Land Sales hereto for references to these contracts):

"It is further agreed between the parties hereto that the party of the first part claims all the tracts hereinbefore described as part of the grant of lands to it by the Congress of the United States; that patent has not issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that in consequence of circumstances beyond its control it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, *therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured;* that in case it be finally determined that patent shall not issue to said party of the first for all or any of the tracts herein described, it will, upon demand, *repay* (*without interest*) *to the party* * * * *of the second part all moneys that may have been paid to it by* * * * on account of any such tract as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the

party * * * of the second part, and will not be responsible to * * * for damages or costs in case of * * * failure to obtain and keep such possession." [record 225, 226.]

This instrument is undoubtedly a contract, but is not a conveyance of the lands. And as only a partial payment has been made, the purchaser is not even the equitable owner of the land.

The contract under which these parties agreed to purchase, particularly informs the purchaser that the company has not yet secured patent or title to the land, and further provides that—

"*therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured.*"

And also it was expressly agreed that the contract should be "*null and void*" if patent shall not be secured *by the company*. [record 226.]

The contract further provides that the company, if it does not procure title, will "repay (without interest) to the party of the second part all moneys that may have been paid to it."

Nothing can be plainer than that those who purchased under these contracts were informed and had notice of facts outside of the records of the land office that the Southern Pacific Railroad Company had not received either *patent* or *title* to the lands so purchased, and therefore that such purchasers do not come within the provisions of the acts of 1887 or 1896.

As the railroad company can never receive a patent or title from the United States the contract to purchase and to sell has terminated and been annulled by its own provisions.

Third Point.

DEFENDANT JACKSON A. GRAVES IS NOT A *BONA FIDE* PURCHASER FROM OR UNDER THE SOUTHERN PACIFIC RAILROAD COMPANY.

1. The Circuit Court adjudged that defendant Graves was a *bona fide* purchaser of about 40,000 acres of land, which Graves purchased in 1893 from the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation organized and created under the laws of Great Britian, hereinafter spoken of as the "Fibre Company." This land was purchased from the railroad by the "Fibre Company" in 1885. [record 315-333.] The Fibre Company being an alien corporation (record, 103, 106, 340), and not a *citizen* of the United States, is by the *law* excluded from the benefits of the act of 1887 and amendatory acts.

The United States has appealed from this part of the decree.

There is no conflict in the evidence upon the facts as to the Graves purchase.

The original bill was filed in this case against the Southern Pacific Railroad Company on May 17, 1890. [record, 89–101.]

The Railroad company was served with subpœna May 19, 1890. [record, 102.]

The Government filed an amended bill of complaint on September 25, 1891, in which the Southern Pacific Railroad Company and the "Fibre Company" and numerous other persons claiming to be purchasers of

certain tracts of land from the railroad were made parties defendant. [record, 103–122.]

An order was made in the Circuit Court on December 28, 1891, requiring the defendants brought in by the amended bill, being absent from the state, to appear and plead, which order was returned, duly published, on March 3, 1892.

The answer of the Southern Pacific Railroad Company and the "Fibre Company," and of the other defendants, *was filed March 14, 1892* [record 122, 146], which was amended June 12, 1893. [record 148, 182.]

The court decided the former cases reported in 146 U. S., 570, 615, 619, on *December 12, 1892*, adjudging that the Atlantic and Pacific lands were the property of the United States.

At this time, while there was a pending suit *against* the Railroad Company *and the "Fibre Company"* for these particular lands, with the issues made up, of testmony largely completed, and with an adjudication that all of the lands granted to and set apart for the Atlantic and Pacific Company were the property of the United States, defendant Graves procured a conveyance for the lands now claimed by him from the "Fibre Company," which conveyance was executed January 27, 1893. [record, 340–346.]

Defendant Graves thereupon procured himself to be substituted in the cause for the "Fibre Company." [record 147.]

The Circuit Court did not by its decree adjudge that the "Fibre Company" was a *bona fide* purchaser *from the Southern Pacific Railroad Company*, and the opinion

of the court makes no reference to the *bona fides* of that transaction.

Indeed there is no testimony in the case upon which to base such an adjudication.

The "Fibre Company" being an alien (record 103, 106, 340) *was not entitled to the benefits of the act of 1887.*

The deeds from the railroad company to the "Fibre Company" are in evidence [record 321–333], *but no testimony was taken of any officer or agent of the "Fibre Company"* showing that the company purchased these lands in good faith from the railroad company.

The testimony of Jerome Madden, land agent of the Southern Pacific Railroad Company, was taken before an examiner of the court *on behalf of defendants* in which he testified that the "Fibre Company" had paid for these lands. [record 636–643.]

Madden further testified, in a general way, that all of the purchasers of lands from the Southern Pacific Railroad Company bought in good faith, and he used the following language: "They paid in good faith; they bought in good faith.

The testimony of Madden, in which he volunteered his opinion as to the state of the knowledge of the officers of the "Fibre Company," and as to their mental condition, was objected to by counsel for the United States, upon the following grounds: "Objected to by Mr. Call as incompetent, irrelevant and immaterial, and not the best evidence and involving a conclusion and a mere opinion of the witness." [record 637, 638.]

These objections were insistsd upon to all such tes-

timony of the witness Madden, they were insisted upon in the briefs in the Circuit Court, and are insisted upon here.

Counsel for the defendants did not entertain the idea for a moment that the *bona fides* of a party in a transaction could be shown from the opinion of another is evident from this candid statement at the time Madden's testimony was taken, as follows: "No man can testify what he believes to be the opinion of any other man, and the same is immaterial, incompetent, and irrelevant." [record 639.]

Witness Madden being further asked if these purchasers were *bona fide*, stated, under objections, "many of them." [record 640.]

2. The first contention of the railroad is that the answer to the bill disclosing sales of lands made by the company, amounts received, and names of purchasers, is evidence against the Government as to those matters.

The original bill of complaint and amended bill sought a discovery as to these matters, but the original bill and the amended bill, *both waived answer under oath*.

It is provided in Rules in Equity, No. 41, as amended, as follows:

"If the complainant, in his bill shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, *shall not be evidence in his favor* * * * *"

It is insisted, however, by counsel that as further

matters regarding these alleged sales by the railroad, were brought out upon the *cross-examination* of Madden, *witness for defendants*, that the Government is bound by statements and tables furnished by the witness with the same effect as though the witness were the Government's own.

The witness Madden was cross-examined by counsel for the Government, as to the identical sales, which he had testified about on his direct examination, and the Government brought out more details concerning those sales, such as what lands had been patented and what not patented, and as to what sums had been received upon each of the sales by the company, but there is no dispute but that the cross-examination was proper in every respect.

The principle is well settled that statements of a witness on cross-examination is the evidence of the party producing the witness, and if in taking depositions, proper objections are made to the testimony in chief, and thereafter the witness is cross-examined, the entire cross-examination goes out with the testimony in chief.

The rule is well stated by Judge Brewer in Callison vs. Smith, 20 Kans., 28–37, in which he says:

"If upon any matter the testimony in chief is excluded, no cross-examination thereon is allowed. The fact that testimony has been taken by deposition before the trial, in no manner affects the question of the competency of each and every part of it. Its competency is determined in the same manner, and upon the same principles, as though the witness was present on the stand and being interrogated in person. A question which, if the witness were present, counsel could not ask, cannot be asked in deposition; and if asked

and answered, must be stricken therefrom. In the case of Wilson vs. Wager, 26 Mich., 452, the court, by Christiancy, J., says: 'All testimony elicited on such cross-examination, consisting as it does of facts which relating to the direct examination, may have been omitted or concealed in that examination, or facts tending to contradict, explain, or modify some inference which might otherwise be drawn from them, must in the nature of things constitute a part of the evidence given in chief, and both alike and together must therefore be treated as evidence *given on the part of the party calling the witness.*' It follows from this, that the testimony elicited upon the cross-examination of the witness by the plaintiff must be taken as evidence on the part of the defendant."

To the same effect, see

Wagner vs. People, 30 Mich., 385.

Campau vs. Traub, 27 Mich., 217.

Schratz vs. Schratz, 35 Mich., 485.

Jones vs. State, 35 Fla., 289.

It results from these authorities that the parol testimony of Jerome Madden, witness for defendant, concerning the *bona fides of the defendant purchasers*, both his examination in chief, cross-examination and redirect, must be excluded from the record and from consideration by the court upon this hearing. But regardless of the *bona fides* of the purchase by the "Fibre Company" it is not, by the provisions of the act of 1887 entitled to protection, being an alien. [record, 103, 106, 340.]

3. The question therefore recurs as to whether there is any evidence to sustain the judgment of the Circuit Court that *defendant Graves* purchased in good faith.

The testimony of defendant Graves was taken in

this cause and it is upon this evidence that the Circuit Court adjudged him to be a *bona fide* purchaser of the lands claimed by him.

The deed from the "Fibre Company" to Graves which as before shown, was made *pendente lite*, recites the payment by Graves to the "Fibre Company" of $50,000. Graves testified as follows: [record 313, 314.] "I have paid some (state and county taxes), and there are others that were assessed this year that were canceled by the order of the District Attorney, holding that they were non-assessable lands. * * *

Q. Did you buy these lands in good faith?

A. Yes expecting to make title to them.

Q And do you hold them as said purchaser and as a citizen of the United States?

A. I do.

Q. And as an innocent purchaser?

A. Well——— ——

Q. For value received?

A. I hold them for a valuable consideration.

Q. Well do you claim to be an innocent purchaser of said lands, under the act of Congress of March 3, 1887?

A. I think I am protected under the act of Congress of 1887. I would like to understand this "innocent"—what you mean by that. Of course I have notice of the defect—I have notice of the Congressional action taken, and of the pendency of this suit; had it when I bought. Outside of that I consider myself an innocent purchaser. Of course I had that notice of that suit. There is no use denying that. At the same time I understand—I think I understand the act of Congress of 1887, and I think I am protected under it

Upon cross-examination, Graves testified in answer to questions as follows:

By Mr. Call—Q. How much did you pay the Atlantic and Pacific Fibre Importing and Manufacturing Company for these lands?

A. I have not paid them anything in coin. But I have agreements with them which are the equivalent of the coin.

Q. What is the nature of the agreements?

A. I am to protect them in the title, that is protect them in their original purchase-money; make what I can out of it over and above that.

Q. *And devote your legal services to that end?*

A. *Yes. They have to have somebody at this end.*

Mr. Call—That is all.

From this review of the evidence it appears without contradiction

(a) That Graves procured a conveyance of these lands from the "Fibre Company" *pendente lite.*

(b) That Graves had actual knowledge of the pendency of this suit at that time;

(c) That no consideration in money or in property passed to the "Fibre Company" when the conveyance was made;

(d) That nothing has since been paid;

(e) That Graves took the naked title to the lands at that time in order that he, *as attorney for the company*, could more conveniently devote his legal services in protecting the title of the Fibre Company.

It therefore requires no argument or citation of authorities to show that Graves is not a *bona fide* purchaser of these lands, for each and every one of the reasons hereinbefore mentioned. The authorities, however, above cited, clearly establish the principle that one who purchases with notice is not a *bona fide* purchaser, and that one who purchases *pendente lite* stands in the shoes of his grantor.

4. The acts of Congress of March 3, 1887, February

12, 1896, and March 2, 1896, set forth in the appendix, and relating to the rights of *bona fide* purchasers from land grant railroads, *are upon the same subject* and being in *pari materia* should be construed together and all treated as a single law determining the rights of such *bona fide* purchasers.

United States vs. Healey, 160 U. S., 136, 146.

Frost vs. Wenie, 157 U. S., 46, 58.

Chicago Railroad vs. United States, 127 U. S., 406.

District of Columbia vs. Hutton, 143 U. S., 18.

By the act of February 12, 1896, it is expressly declared that it is an amendment of the act of March 3, 1887, and the act of March 2, 1896, expressly recognizes and confirms the act of March 3, 1887, in the last clause of section 2, in which it provides that a *bona fide* purchaser of patented lands may establish his rights in a United States court," or at his option as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the Forty-ninth Congress," which act, so referred to, is the act of March 3, 1887.

This provision in the act of 1896 clearly shows the intention of Congress that the rights of a *bona fide* purchaser, and as to who may be a *bona fide* purchaser under the act of 1887, is not in any way enlarged by the act of 1896, because it is provided that the rights of such purchaser may be protected in either the Interior Department or in the United States Court.

Therefore whatever limitations there are in the act of 1887, upon the rights of *bona fide* purchasers, must

be read into the act of 1896, as, in contemplation of law, they are a single statute.

The act of 1887 (sections 3 and 4) limits its protection *to* "*bona fide purchasers, they being citizens of the United States, or to persons who have declared their intention to become such citizens.*"

The acts of February 12, 1896, and March 2, 1896, *referring to the act of 1887*, make further provisions as to "*bona fide* purchasers."

The definition thus given to a "*bona fide* purchaser" is necessarily carried into all these acts.

In Claflin vs. Insurance Company, 110 U. S., 81, at pp. 92-93, the court said upon a similar question:

"We are bound to take the words of the law in their usual, ordinary and literal meaning and to construe the two provisions in the different sections in the same sense which in previous statutes had uniformily been given to them, and not invent a new application and relation of the two clauses without any indication whatever of any intention on the part of Congress to that effect."

In this connection it is significant that all of the laws of the United States regarding disposition of the public domain in every mode and form permits lands to be acquired only by citizens of the United States or those who have declared their intention to become such. It is inconceivable that Congress intended, therefore, in further providing in the act of March 2, 1896, for the protection of *bona fide* purchasers that they intended to repeal the provisions of the act of 1887 and antagonize all the other statutes relating to the public domain, by allowing unlimited quantities of public lands to pass to alien corporations.

Neither is it to be presumed that Congress intended, by the act of 1896, in providing that conformation could be secured either through the Interior Department or through the Federal Court, at the option of the claimant, that in the *Interior Department* citizens of United States, or those who had declared their intention, only would be entitled to protection, and that in the *Federal Court* either citizens or aliens could receive such protection and confirmation of title.

Now the protection extended by sections three and four of the act of 1887 is only *to citizens of the United States* or persons who have declared their intention to become such.

The "Fibre Company," therefore, even if it had shown itself to be a *bona fide* purchaser of these lands, being a corporation organized under the laws of Great Britain, would not have been entitled to the benefits of these statutes, and as defendant Graves has not shown himself to be a *bona fide* purchaser, he is not entitled to such protection.

5. Defendant Graves took a deed from the "Fibre Company" to the lands claimed by that company, amounting to about 50,000 acres, of which about 40,000 acres are the subject of this suit.

But of these 40,000 acres, *more than 35,000 acres of them remain unpatented.* Therefore as to such unpatented land it cannot be claimed that such lands are operated upon by the curative act of March 2, 1896, as that act only purports to protect rights to *patented lands.*

Therefore, independent of the fact that the "Fibre

Company" has not shown itself to be a *bona fide* purchaser from the railroad; and independent of whether the act of 1896 is restricted in its operations to protecting *citizens of the United States*, it appears that inasmuch as these 35,000 acres have *not been patented* or certified to the railroad, that there is no act of Congress which will protect the "Fibre Company" to them, and, as Graves stands in the shoes of that company, he has no protection.

In conclusion, it is submitted that the supplemental decree of the Circuit Court should be reversed as to those defendants who are not *bona fide* purchasers and those who are aliens with directions to enter a decree in favor of the Government for the lands claimed by them.

Submitted,

JOSEPH H. CALL,

Special U. S. Attorney.

Appendix (1).

ACT OF CONGRESS OF MARCH 3, 1887.

(Chapter 376, 2nd session 49 Cong.)

AN ACT To provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and is hereby, authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

SEC. 2. That if it shall appear, upon the completion of such adjustments respectively, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented, by the United States, to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so reconvey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

SEC. 3. That if, in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of any *bona fide* settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon applica-

tion shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: *Provided*, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: *And provided also*, That he did not voluntarily abandon said original entry: *And provided further*, That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to *bona fide* purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to *bona fide* settlers residing thereon.

SEC. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants, respectively, shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands, and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suit or suits to be brought against such company for the said amount: *Provided*, That nothing in this act shall prevent any purchaser of lands erroneously withdrawn, certified, or patented as aforesaid from recovering the purchase-money therefor from the grantee company, less the amount paid to the

United States, by such company as by this act required: *And provided*, That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions.

SEC. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said *bona fide* purchaser, his heirs or assigns: *Provided*, That all lands shall be excepted from the provisions of this section which at the date of such sales were in the *bona fide* occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: *Provided further*, That this section shall not apply to land settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

SEC. 7. That no more lands shall be certified or conveyed to any state or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the

Interior that such transfers may create an excess over the quantity of lands to which such state, corporation, or individual would be rightfully entitled.

Approved, March 3, 1887. (24 Stat., 556.)

ACT OF CONGRESS, FEBRUARY 12, 1896.

(29 Stat., 6.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of an act entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March third, eighteen hundred and eighty-seven, be, and the same is hereby, amended by adding thereto the following proviso: "*Provided further*, That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the Governmen a sum equal to the difference between the portion of the purchase price so paid and the Government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser."

ACT OF CONGRESS OF MARCH 2, 1896.

(29 Stat., 42.)

Be it enacted, &c., That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress, and amendments thereto, is extended accordingly as to the patents herein referred to. But no patent to any lands held by a *bona fide* purchaser shall

be vacated or annulled, but the right and title of such purchaser is hereby confirmed: *Provided*, That no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers, to withdraw the same from sale or entry.

SEC. 2. That if any person claiming to be a *bona fide* purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a *bona fide* purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons, for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the *bona fides* of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a *bona fide* purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a *bona fide* purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons, for whose benefit the certification was made for the value of the land as hereinbefore provided. Any *bona fide* purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such *bona fide* purchaser in any United States court having jurisdiction of the subject-matter, or at his option as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the Forty-ninth Congress.

SEC. 3. That if at any time prior to the institution of suit by the Attorney-General to cancel any patent or certification of lands erroneously patented or certified, a claim or statement is presented to the Secretary of the Interior by or on behalf of any person or persons, corporation or corporations, claiming that such person or persons, corporation or corporations, is a *bona fide* purchaser or are *bona fide* purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is investigated in said Department of the Interior; and if it shall appear that such person or corporation is a *bona fide* purchaser as aforesaid, or that such persons or corporations are such *bona fide* purchasers, then no such suit shall be instituted, and the title of such claimant or claimaints shall stand confirmed; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the patent was issued or certification was made for the value of the land, as hereinbefore specified.

Appendix (2).

Table of Dates in Former Appeal (Case 71 October Term, 1897.)

Showing chronologically dates of grants, filing of maps, and other important acts.

The controlling facts and conclusions of the court upon the effect to be given to this evidence is shown by the opinion upon the former appeal (see 168 U. S., 1–66).

Dec. 2, 1865 ... ...Articles of incorporation of Southern Pacific Railroad Company filed in California, for a railroad "from some point on the Bay of San Francisco, in the

state of California, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego, thence eastward through the said county of San Diego to the eastern line of the state of California."

(record 2266, 2269, case 71, Oct. term, 1897.)

July 27, 1866....Act of Congress granting lands to Atlantic and Pacific Company from Springfield, Mo., to the Pacific ocean, and authorizing the Southern Pacific to make connection at state of California's boundary.

Nov. 23, 1866...Acceptance of this act by A. & P. R. Co. (record 2370, case 71.)

Jan. 3, 1867.....Southern Pacific Railroad map of general route from San Francisco via Mojave to Colorado river at Needles, filed.

Nov. 2, 1869.....Secretary of Interior Browning vacates previous order of suspension of August 20, 1868, and rejects map of 1867, and orders lands restored.

(record 2699, 2702, case 71.)

Nov. 11, 1869...Secretary Cox upon reconsideration, confirms previous orders of November 2, 1869, rejecting map and restoring lands. (record 2699, 2702, case 71.)

April 4, 1870...California Legislature passed act authorizing Southern Pacific Railroad to connect with transcontinental railroad from the east at the *eastern* boundary of California, and to change its route and amend articles and accept additional grants from Congress.

June 28, 1870...Congress passed joint resolution authorizing Southern Pacific Railroad to construct upon the route as near as may be, shown by map of 1867 (from San Francisco via Mojave to Colorado

river at Needles), and to receive patents to lands upon same terms, etc., as granted by act of July 27, 1866, "expressly saving and reserving the rights of actual settlers, together with the other conditions and restrictions provided for in the 3rd section of said act."

March 3, 1871 ..Act of Congress granting lands to Southern Pacific Company and Texas Pacific Company, and authorizing the Southern Pacific Company to construct its road from Tehachapi Pass, via Los Angeles, to the Colorado river at Fort Yuma.

April 3, 1871 ...Southern Pacific map of general route from Mojave, via Los Angles, to Yuma filed. (record 2350, case 71, and see map 39, vol. 6.)

March 9, 1872 . Atlantic & Pacific map of definite location of section from range 7 east, S. B. M., to west line of Los Angeles County, filed in Interior Department. (For this map see Vol. 6, No. 31.) Filed and approved by Secretary April 11, 1872 (2240, case 71). Approved by Comr. and lands withdrawn in 30-mile limits Apr. 22, 1872 (rec. 2678, case 71. Withdrawal map, rec. Vol 6, No. 41, case 71.)

Aug. 15, 1872 ...Atlantic and Pacific maps of definite location, covering sections (1) from Colorado river to range 7 east, S. B. M., (2) from west line of Los Angeles County to Pacific ocean at Ventura, filed in Interior Department. (For these maps, see Vol. 6, Nos. 29, 30.) Filed August 15, 1872. Approved by Secretary Apr. 16, 1874. (case 71.) Lands withdrawn in 30 mile limits Nov. 23, 1874. (rec. 2678, 2685, case 71. Withdrawal maps rec Vol. 6, Nos. 9, 42, case 71.)

May 11, 1874 ...*First section* Southern Pacific (branch) road as definitely located and constructed from San Fernando via Los Angeles to Spadra, filed in Interior Department. Definite withdrawal within 20 and 30-mile limits, May 11, 1874.

Nov. 15, 1875 ...*Second section* Southern Pacific (branch) road as definitely located and constructed from Spadra to range 1 west, filed in Interior Department. Definite withdrawal within 20 and 30-mile limits December 20, 1875.

July 24, 1876 ... *Third section* Southern Pacific (branch) as definitely located and constructed from range 1 west to range 7 east, filed in Interior Department. Definite withdrawal within 20 and 30-mile limits Aug. 19, 1876.

March 6, 1877 *Fourth section* Southern Pacific (branch) as definitely located and constructed from San Fernando to Mojave, filed in Interior Department. Definite withdrawal within 20 and 30-mile limits Mar. 27, 1877.

Jan. 31, 1878 ...*Fifth section* Southern Pacific (branch) as definitely located and constructed from range 7 east to Colorado river at Yuma, filed in Interior Department

Jan. 7, 1885 Sectional maps showing Southern Pacific Railroad from Mojave to Colorado river at Needles, as constructed and located, under joint resolution of June 28, 1870, filed in Interior Department.

July 6, 1886.... Act of Congress forfeiting Atlantic and Pacific Railroad grant, and restoring lands to public domain.

March 3, 1887 ...Act of Congress providing for adjustment of railroad land grants and protection of *bona fide* purchasers from railroad, of lands excepted from the grant.

June 7, 1887 ..... Decision of the Secretary of Interior promulgated to the effect that grant to Atlantic and Pacific Railroad, in California, was not operated upon by Southern Pacific grant of 1871, and that the lands were restored to public domain. (5 L. D., 691, 6 L. D., 679, 6 L. D., 812, 6 id., 816.)

Nov. 22, 1889 ... Amended bill of complaint filed by United States in United States Circuit Court, Southern District of California, against Southern Pacific Railroad Company (defendants being then in court), putting in issue grant made to Atlantic and Pacific Railroad Company, definite location of road and forfeiture to United States, and restoration to public domain by act of July 6, 1886. (see 168 U. S., page 30.)

Nov. 12, 1892 ... Decision of above case of United States vs. Southern Pacific Railroad Company by United States Supreme Court (146 U. S., 570–615–619), adjudging that Atlantic and Pacific Railroad Company received a valid grant from Congress, had definitely located its entire route, and that its grant in California had been forfeited and restored to the public domain free from any title or claim of the Southern Pacific Railroad Company, which could prevent the forfeiture and restoration.

May 17, 1890 .. This bill was filed by the United States against Southern Pacific Railroad Company, *et al.*

Feb. 12, 1896 Act of Congress amending act of March 3, 1887, and providing for payment to Government by purchasers of difference in price paid to railroad on executory contracts for patented land and Government price.

March 2, 1896 Act of Congress confirming titles of *bona fide* purchasers from railroad of patented lands and referring in section 3 to the act of March 3, 1887.

Appendix (No. 3).

Table of Land Sales.

Showing names of purchasers of land from S. P. R.R Co., date of contract, purchase price, amount paid, and whether patented, with references to the record.

Explanation I. All contracts for unpatented lands contain a provision to the effect that the railroad company has not yet secured title or patent for the land, and that if it fails to do so the contract shall be void, and that it will refund the purchase-money paid, without interest.

Explanation II. This table follows in its order the decree of the Circuit Court.

First. (a) George Loomis, trustee for Pacific Coast Oil Company, executory contract dated April, 25, 1889; 560 acres; purchase price $2800; amount paid $560 prior to commencement of this suit. Land unpatented. [rec. 223.]

(b) George Loomis, trustee for Pacific Coast Oil Company, sixteen separate executory contracts, in identical form, each dated May 8, 1890; 2279 86-100 acres; price $5.00 per acre, paid $1.00 per acre; land unpatented and partly unsurveyed. [rec. 234 to 307 and 351 to 361.]

Second. Pacific Coast Oil Company, quit claim deed, dated March 5, 1888; 313 82-100 acres; purchase price $784.55; paid; land unpatented. [rec. 228.]

Third. Jackson A. Graves, assignee of Atlantic and Pacific Fibre Importing and Manufacturing Company, limited, a corporation of Great Britain, which company purchased from railroad by contracts dated July 23, 1885 [rec. 321–327–333], about 35,000 acres; average purchase price about $1.00 per acre; land unpatented.

Graves procured a conveyance from the British corporation *pendente lite*, January 27, 1893 [rec. 314, 340], and paid nothing but entered into a contract by which he agreed to devote his legal services to protect the company in their original purchase money paid for the land and to make what he could out of it over and above that. Graves had actual knowledge of the pendency of this suit [rec. 314, 315]; lands unpatented.

There was no testimony by the officers or agents of that company that the "Fibre Co." purchased in good faith.

Fourth. Mary L. Gould, executory contract dated July 25, 1885; 160 acres; purchase price $400, amount paid $80; land unpatented. [record 379.]

Fifth. M. W. Stimson, two executory contracts, both dated December 22, 1887; 320 acres; purchase price $800, amount paid $160; land unpatented. [Not reprinted, see record in case 6, see record case 71 O. T., 1897, pp. 2909, 2915.

Sixth. Charles M. Stimson, executory contract dated December 22, 1887; 160 acres; purchase price $400, amount paid $80; land unpatented. [Not reprinted; see record in case 71, p. 2896.]

Seventh. Daniel D. Brunk, executory contract dated July 24, 1885; 80 acres; purchase price $200, amount paid $40; land unpatented. [record 427.]

Eighth. Stefano Cuneo, executory contract dated March 30, 1885; 676.36 acres; purchase price $676.36, amount paid $135.27; land unpatented. [record 437.]

Ninth. G. Suraco, executory contract dated March 30, 1885; 640 acres; purchase price $1600, amount paid $320; land unpatented. [record 445.]

Tenth. William H. Carlson, two executory contracts dated November 22, 1884, and November 1, 1886; about 800 acres; purchase price $1767, amount paid $353; land unpatented. [record 456, 463.]

Eleventh. Thomas F. Mitchell, executory contract dated March 18, 1885; 320 acres; purchase price $550, amount paid $225.00; land unpatented. [record 479.]

Twelfth. Ramon Perea, executory contract dated July 1, 1886; 640 acres; purchase price $1600.00,

amount paid $320.00; land unpatented. [record 486.]

Thirteenth. Jackson A. Graves, grantee of Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation of Great Britain; deed dated July 23, 1885, to the British corporation for about 5000 acres [record, 315]; purchase price $56018.00, fully paid. Graves procured a conveyance from the British corporation *pendente lite*, January 27, 1893 [record, 340], and paid nothing, but entered into a contract by which he agreed to devote his legal services to protect the company in their original purchase-money paid for the land and to make what he could out of it over and above that. Graves had actual knowledge of the pendency of this suit [record 314]; land is patented.

There is no testimony by the officers or agents of that company that the "Fibre Company" purchased in good faith.

Fourteenth. (a) D. M. Sutherland, deed dated July 19, 1893, pursuant to contract dated July 28, 1887 [record, 7, 497]; 80 acres; purchase price $200, paid; land is patented.

(b) D. M. Sutherland, executory contract dated July 28, 1887, for 160 acres; purchase price $400, amount paid $133.00; land is patented. [record, 503.]

Fifteenth. Clarence T. Cleve, deed dated August 12, 1890, pursuant to contract from railroad dated August 27, 1886 [record, 7 and 513]; 160 acres; purchase price $400, paid; land is patented.

Sixteenth. Peter Hamilton and Mrs. Thomas Allison, deed dated January 18, 1889, pursuant to contract dated January 14, 1884 [record 8, 528]; 640 acres; purchase price $1600, paid; land is patented.

Seventeenth. William Ferguson and James Hamilton; deed dated January 18, 1889, pursuant to contract dated January 14, 1884 [rec. 8, 542]; 640 acres; price $1600, paid; land is patented.

Eighteenth. Ira H. Bradshaw; deed dated September 29, 1887, pursuant to contract dated August 26, 1886 [rec 8, 553]; 160 acres; purchase price $400, paid; land is patented.

Nineteenth. Peter Cook, M. L. Wicks and Alexan-

der Cook; deed dated June 21, 1887; 640 acres; purchase price $1600, fully paid; land is patented. [rec. 628.]

Twentieth. Mary L. Gould, deed dated January 28, 1890, pursuant to contract dated January 2, 1885 [rec. 5, 386]; 200 acres; purchase price $521, paid; land is patented.

Twenty-first. (a) Will D. Gould, deed dated Aug. 8, 1887, pursuant to contract dated July 28, 1887 [rec. 5, 407]; 160 acres; purchase price, $400, paid; land is patented. (b) Will D. Gould executory contract dated August 8, 1887; 160 acres; purchase price $400, amount paid $80; land is patented. [rec. 403.]

Twenty-second. James M. Hait, deed dated May 7, 1888, pursuant to contract dated Jan. 2, 1885 [rec. 5, 412]; 80 acres; purchase price $400, paid; land is patented.

Twenty third. Richard Dillon and John Kenealy, two deeds dated October 2, 1886; 223 acres; purchase price $793, paid; land is patented. [rec 562, 567.]

Twenty-fourth. J. Garbet and McH. Pierce; deed January 28, 1890; pursuant to contract dated January 30, 1888 [rec 9, and 578]; 80 acres; purchase price $200, paid; land is patented.

Twenty-fifth. Nathan Cole, Jr., deed dated January 7, 1892, pursuant to contract dated June 24, 1885 [rec. 9, 10,589]; 320 acres; purchase price, $800, paid; land is patented.

Twenty-sixth. Jacob Harps, deed dated October 7, 1887, pursuant to contract dated August 14, 1884 [rec. 10, 600]; 144 acres; purchase price $1449, paid; land is patented.

Twenty-eighth. Pablo Lopez, deed dated July 18, 1887; about 162 acres; purchase price $406, paid; land is patented. [rec. 608.]

Twenty ninth. Jesse M. Blanchard, deed dated March 12, 1887; about 159 acres; purchase price $399.95, paid; land is patented. [rec. 617.]

Thirtieth. Richard Dillon, deed dated October 2, 1886; 93 acres; purchase price $469.40, paid; land is patented. [rec. 567.]

The lands above described so far as patented were included in four patents issued by the United States to the Southern Pacific Railroad Company, dated respectively March 29, 1876; April 4, 1879; December 27, 1883; January 9, 1885. [rec. 644 to 667.]

Where deeds have been made pursuant to a contract, payment of 1-5 was made at date of contract and the balance at date of deed. [rec. 5, 7, 9.]

No. 186. 25

Office Supreme Court
FILED
JAN 28 1901
JAMES H. McKENNEY,
Clerk

Brf. of Payson & Evarts for Appellees

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 186.

Filed Jan. 28, 1901.

THE UNITED STATES,
Appellant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, GEORGE LOOMIS ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR APPELLEES.

L. E. PAYSON,
MAXWELL EVARTS,
Of Counsel for Appellees.

C. G. Burroughs, Walker and Centre Street, N. Y.

SUPREME COURT OF THE UNITED STATES.

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BRIEF OF APPELLEES.

Statement.

This suit was originally brought by the United States to quiet its title to certain lands claimed by the Southern Pacific Railroad Com-

pany to be within the limits of its Branch Line Grant, under Section 23 of the Texas Pacific Act (16 U. S. Stat., 573), and has already been before this court in 168 U. S., 1, where it was decided that all the questions raised therein between the United States and the Southern Pacific Railroad Company had been theretofore decided adversely to the Company in the prior cases of the United States vs. Southern Pacific Railroad, 146 U. S., 570, and United States vs. Colton Marble and Lime Co. and United States vs. Southern Pacific Railroad, 146 U. S., 615.

By an amended bill the complainant made defendants in the cause the individuals who had purchased or had contracted to purchase from the Southern Pacific Railroad a part of the lands involved in this suit (Record, p. 103), and at the close of its opinion this Court said at page 65 (168 U. S., 1, 65) that, as the bill was brought not only to quiet the title of the United States to the lands claimed by the Railroad Company, but to those claimed by individual defendants by purchase from or contract with said company, the Circuit Court should have determined by its final decree the rights of such individual defendants under the Act of Congress approved

March 3, 1887 (24 U. S. Stat., 556), instead of providing that the final decree entered by it should not affect the rights which such individual defendants had in the land under and by reason of said Act of Congress. This Court thereupon affirmed the decree below as to such individual defendants, " subject, however, to the right of the government to proceed in the Circuit Court to a final decree as to those defendants." The decision of this Court upon this question at p. 65 was as follows:

> " One of the objects of this suit was to obtain a decree quieting the title of the United States, not only to the lands claimed by the Southern Pacific Railroad Company, but to those claimed by numerous individual defendants by purchase from or contract with that company. The decree which was passed declares that it is not to 'affect any right which the defendants, or any of them, other than the Southern Pacific Railroad Company, now have or may hereafter acquire in, to or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes', approved March 3, 1887'. Instead of leaving undetermined,

> the matters in dispute between the United States and the defendants other than the Southern Pacific Railroad Company the Circuit Court should have determined, by its final decree, what rights those defendants have by virtue of the above act of March 3, 1887, 24 Stat. 556, c. 376, in the lands or any of them, now in dispute and claimed by the United States. The effect of the decree is to leave undetermined the question whether the defendants who claim under the Southern Pacific Railroad Company are protected by that or any other act of Congress. The Government was entitled to a decree quieting its title to all the lands described in its pleadings, except those, if any, that are protected, in the hands of claimants, by acts of Congress. United States v. Winona & St. Peter Railroad, 165 U. S. 463; Winona & St. Peter Railroad v. United States, 165 U. S. 483. But as the Government has not appealed, the decree cannot be reversed for the error of the Circuit Court in not finally disposing of the issues between the United States and the individual defendants who claim under the Southern Pacific Railroad Company."

Thereupon, and immediately after the entering in the Circuit Court an order upon the mandate of this Court, a motion was made in said Circuit Court in behalf of the United States

for a further decree in conformity with the mandate of this Court, which required "that such proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding" (Record, p. 18).

The motion was argued before Judge Ross, the United States Circuit Judge for the Southern District of California, and a further decree was entered, in accordance with the views expressed by him, to the effect that all the individual defendants in this suit, except such of them as had failed to prove their citizenship or intention to acquire citizenship, should be confirmed in their purchases of land from the Southern Pacific Railroad Company under the provisions of the Adjustment Act, approved March 3, 1887 (24 U. S. Stat., 556), and the subsequent act, approved March 2, 1896 (29 U. S. Stat., 42).

The lands purchased from the Southern Pacific Railroad Company by the individual defendants is of two kinds—viz.: lands for which patents have been issued to the Southern Pacific Railroad Company by the United States, and unpatented lands.

The first twelve subdivisions of said further

decree relate to the unpatented lands, which amount to 43,315.67 acres, and the title to which the decree adjudges that certain of the individual defendants are entitled to purchase from the United States under the Act of Congress of March 3, 1887 (Record, p. 48 *et seq.*).

The remaining twenty-one subdivisions of said decree relate to lands patented by the United States to the Southern Pacific Railroad Company, which amount to 9,284.39 acres, and the title to which, under the Act of March 2, 1896, in the remaining individual defendants is confirmed by said decree (Record, p. 48, *et seq.*).

From said further decree, entered upon the 5th day of August, 1898, an appeal was taken by the Government to the United States Circuit Court of Appeals for the Ninth Circuit, which Court on October 9, 1899, affirmed the decree (Record, p. 673).

From the decree of the said Circuit Court of Appeals, affirming the further decree entered below in accordance with the mandate of this Court, this appeal has been taken by the United States.

POINT I.

The individual defendants in this case were bona fide purchasers from the Railroad Company within the meaning of the Acts of Congress of March 3, 1887, and of March 2, 1896.

By Section 4 of the Act of Congress approved March 3, 1887, and entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes" (printed in full in appendix, p. 1.), it was provided that any purchaser in good faith, who was a citizen of the United States, or had declared his intention to become such, from a railroad company of land, which had been erroneously certified or patented to it, was entitled to the land so purchased and to a patent from the United States therefor, and that the United States should look to the Railroad Company which disposed of the land for an amount equal to the Government price of similar lands.

By the fifth section of the same act it was enacted that when any railroad company shall

have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, land not conveyed to or for the use of such company, it should be lawful for the *bona fide* purchaser to make payment to the United States for such land at the ordinary Government price for like lands, and that thereupon patents should issue therefor.

Subsequently, and on February 12, 1896, an act was passed amending Section 4 of the Adjustment Act of 1887 (Appendix, p. v.), which is important here, in that it recognized the case of a purchase in which only a portion of the purchase price had been paid, and provided that in such a case, where the amount paid to the railroad by the purchaser was less than the Government price, the purchaser was only required to pay the difference between what he had paid the railroad and the Government price, and that the amount demanded in such a case by the United States from the railroad should be the amount paid to it by such purchaser.

The next legislation upon the subject was the Act of Congress approved March 2, 1896, (Appendix, p. vi.), which provided in its second

section that if any person (whether citizen or foreigner) was a *bona fide* purchaser of lands erroneously patented or certified to a railroad company, his title to such lands should stand confirmed, and the Government should recover from the Railroad Company the value of the land, which in no case should be more than the minimum Government price thereof.

It is important to notice how this legislation just referred to became more and more favorable to the *bona fide* purchaser. By the first act he was required to be a citizen of the United States. By the third act the benefit of this legislation was extended to a foreigner as well as a citizen, making the entire test of the right to the benefit of this law the good faith of the purchaser. By the first act the purchaser was required to make proof of the purchase of the land, and then a patent would be issued to him therefor. By the third act the title of the purchaser was at once confirmed. We call attention to this merely to show that the tendency of the Government was to broaden and not to narrow its policy and to confirm the title of any purchaser from a railroad of its land, provided only that such purchase was made in good faith.

These laws have all been before this Court for construction, and it was held in the two Winona cases (165 U. S., 463, and 165 U. S., 483) that the *bona fides* referred to in the statutes was not the same as the *bona fides* of the common law, but was to be given a broader construction and held to mean any " honest transaction between a purchaser and a railroad company."

The present case would seem to fall within and be governed by the decisions in the Winona cases. The only question presented here is whether the individual defendants are *bona fide* purchasers from the Railroad Company of the land involved herein, and there is nothing in the facts of this case to distinguish it from the Winona case or to constitute any reason why the broad, general policy of the Government towards settlers of public land should not apply to the individuals in this case as well as to any other purchaser from a railroad company of lands which had been forfeited by the Government and become a part of the public lands.

So long ago as the case of Clements vs. Warren, 24 How., 394, 397, it was said that

> " The policy of the federal government in favor of settlers upon public lands has

> been liberal. It recognizes their superior equity to become the purchasers of a limited extent of land, comprehending their improvements, over that of any other person."

Again, in the late case of Tarpey vs. Madsen, 178 U. S., 215, 220, this Court again recognized this principle, and said :

> " In this respect we must notice the oft-repeated declaration of this court that the law deals tenderly with one who, in good faith, goes upon the public lands with a view of making a home thereon (Ard vs. Brandon, 156 U. S., 537, 543; Northern Pacific Railroad vs. Amacker, 175 U. S., 564, 567). With this declaration, in all its fulness, we heartily concur."

The whole theory of the Winona case was that no narrow construction was to be given to the words "*bona fide* purchaser," as such a purchaser, within the strict meaning of the term, would have been protected without any special act of Congress, and that the question was to be examined broadly and having regard to all the attendant circumstances of the case. In other words, Congress, when it passed the acts in question, had in mind the protracted delay of the Land Department of the Government in deter-

mining the various questions of title arising under the grants in aid of the Pacific roads and the long litigation which was almost certain to occur in the Courts before those questions of title were ultimately disposed of, and decided that it was far wiser not to delay the settlement and improvement of the vast tract of country included within these land grants, but to provide that any purchaser from the Railroad, so long as he was an honest purchaser, should be protected in his title, even if it should ultimately be decided that the United States was legally entitled to the land. That is to say, this Court has substantially held in the Winona case that the United States, by the Adjustment Acts, decided to recognize the fact that the purchasers from the railroads held a certain equitable position as to the lands bought by them; that such equity was upon a broader basis than any rights between individuals, and that it was nothing strange or unusual in the Government to say that, as to its own lands, it would recognize certain equitable rights therein, such recognition growing out of the general policy of the Government to settle the country as speedily as possible.

Inasmuch as the Federal Government has

always encouraged the taking up of its vacant land, and as inducements have invariably been put forward to persuade settlers to purchase such land, the view of this Court was that these adjustment acts were but another step in such policy, and were passed simply to bring about an immediate settlement of these particular railroad grant lands, which had again become part of the public domain, and leave to the Government to deal with the railroads as to the question of payment therefor.

The decision of Mr. Justice BREWER in the Winona case (165 U. S.), at page 478, is as follows:

> "We are unable to agree with this contention of counsel, for several reasons: In the first place, the situation as it was known to exist makes against any such narrow construction. While instances of such fraudulent conduct on the part of the State to which the lands were certified, or the company to which the lands were patented, might exist, yet in the nature of things they would be few and hardly worth the special notice of Congress, while on the other hand the fact that there had been a difference between the land department and the courts, one construction obtaining in the former prior to the decisions by the latter, and the further fact that by this difference of construction many tracts

had been erroneously certified or patented, must have been well known to Congress, and naturally therefore a subject for its legislation. Further, there was no need of any legislation to protect a '*bona fide* purchaser'. This had been settled by repeated decisions of this court. United States v. Burlington & Missouri River Railroad Company, 98 U. S. 334, 342; Colorado Coal Company v. United States, 123 U. S. 307, 313—reaffirmed in United States v. California &c. Land Company, 148 U. S. 31. 41. For in each of those cases it was decided that, although a patent was fraudulently and wrongfully obtained from the Government, if the land conveyed was within the jurisdiction of the land department the title of a *bona fide* purchaser from the patentee could not be disturbed by the Government, so that this provision was absolutely unnecessary if that which is now claimed by counsel for the Government is all that was intended by Congress. We do not mean to assert that because legislation to cover such a contingency was unnecessary, therefore the language used by Congress necessarily implies something other and different, because of course it may have been that Congress intended nothing but a simple declaration of the law as it was known to exist. At the same time the fact, that under one construction it was needless, raises a presumption that something more was intended, and that Congress had in

574

view the protection of other parties than were already protected by general law.

" But we need not rest on these inferences and presumptions. Other provisions of the acts of 1887 and 1896 make clear the intent of Congress. Section 3 of the act of 1887 provides that if the homestead or preemption entry of any *bona fide* settler has been erroneously cancelled on account of any railroad grant it may be reinstated, provided he has not located another claim or made an entry in lieu of the one so cancelled, and also did not voluntarily abandon such entry. By this section Congress provided for a reinstating of the title of one deprived thereof by an erroneous ruling of the land department, but, at the same time, limited the right of reinstating to cases in which the original entryman had not voluntarily abandoned his entry, or had not since that time made a new entry. In other words, it was limiting the restoration of the title of the original entryman to cases in which he had a continuing and present equitable right to recognition. As to all other cases, Congress reserved the determination of the equities between the Government, the railroad company and purchasers from the latter, and in subsequent sections it made provision for the adjustment of such equities.

" Section 4 of the same act, expressly referring to all other lands, erroneously certified or patented to any railroad company,

provides that citizens who had purchased such lands in good faith should be entitled to the lands so purchased and to patents therefor issuing directly from the United States, and that the only remedy of the Government should be an action against the railroad company for the Government price of similar lands. It will be observed that this protection is not granted to simply *bona fide* purchasers (using that term in the technical sense), but to those who have one of the elements declared to be essential to a *bona fide* purchaser—to wit, good faith. It matters not what constructive notice may be chargeable to such a purchaser, if, in actual ignorance of any defect in the railroad company's title, and in reliance upon the action of the Government in the apparent transfer of title by certification or patent, he has made an honest purchase of the lands. The plain intent of this section is to secure him the lands, and to reinforce his defective title by a direct patent from the United States, and to leave to the Government a simple claim for money against the railroad company. It will be observed that the technical term '*bona fide* purchaser' is not found in this section, and while it is provided that a mortgage or pledge shall not be considered a sale so as to entitle the mortgagee or pledgee to the benefit of the act, it does secure to every one, who in good faith has made an absolute purchase from a

railroad company, protection to his title irrespective of any errors or mistakes in the certification or patent.

"Section 5 of the same act applies to cases in which no certification or patent has issued, and yet the lands sold by the railroad company are the numbered sections prescribed in its grant and coterminous with the constructed portions of its road, and it is there provided that where the lands so sold by the company 'are for any reason excepted from the operation of the grant to said company,' the purchaser may obtain title directly from the Government by paying to it the ordinary Government price of such lands. It is true the term used here is '*bona fide* purchaser,' but it is a *bona fide* purchaser from the company, and the description given of the lands as not conveyed and 'for any reason excepted from the operation of the grant' indicates that the fact of notice of defect of title was not to be considered fatal to the right. Congress attempted to protect an honest transaction between a purchaser and a railroad company, even in the absence of a certification or patent. These being the provisions of the act of 1887, the act of 1896, confirming the right and title of a *bona fide* purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest sense a '*bona fide* purchaser,' has, nevertheless, purchased in good faith from the railroad company.

"We have been referred in the arguments of this and other cases to the debates in Congress, and to the reports of the committees of the two houses to whom the bills were referred as confirmatory of the conclusions we have reached, but it is unnecessary to consider any of the evidence derived from these sources, if, indeed, it is open to consideration, for the language of the two acts is clear, and fully discloses the intent of Congress. Our conclusion is that these acts operate to confirm the title to every purchaser from a railroad company of lands certified or patented to or for its benefit, notwithstanding any mere errors or irregularities in the proceedings of the land department, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the land grants, although within the limits of the grants, excepted from their operation, providing that he purchased in good faith, paid value for the lands, and providing, also, that the lands were public lands in the statutory sense of the term, *and free from individual or other claims.*"

In the last words of the quotation just cited from the first of the Winona cases (165 U. S., 463) will be found the keynote of the whole decision—viz.: the Government has a right to waive its own technical rights to its own land so long as it

does not thereby affect the rights of third parties, and this view of the decision is emphasized by the second Winona case (165 U. S., 483), where the claim of the purchaser from the Railroad Company was disallowed for the reason that such claim interfered with the rights of a third person who had been in possession of the land then in question for twenty years.

In the letter from Attorney-General Garland to the Secretary of the Interior, dated November 17, 1887 (6 L. D., 272), it was said, at page 275:

> "The fifth section is a part of the same scheme as the residue of the act. The wrong done the settler who in good faith shall have purchased lands of the railroad company, to which the company by the adjustment is shown to have no legal right, is identical, whether the purchases are in the indemnity or primary limits. The hardship he may be subjected to by loss of his land, improvements and labor is the same in either case. The whole scope of the law from the second to the sixth section, inclusive, is remedial. *Its intent is to relieve from loss settlers and bona fide purchasers, who, through the erroneous or wrongful disposition of the lands in the grants, by the officers of the government or by the railroads have lost their rights or acquired equities, which in justice should be recognized.*

> * * * It is not required that the sale by the railroad company shall have been made on its part in good faith, *but only that the purchaser shall have bought in good faith. That it was sold under a claim of the grant to another in good faith is the ground of his equity.*"

In Sethman vs. Clise, XVII., L. D., 307, 311, it was said by Secretary Smith as follows:

> "Congress contemplated the immediate adjustment of these grants, and while willing to afford means for recovering from said companies' lands to which they were not actually entitled, or lands not earned by them, but claimed by them under their respective grants, it was unwilling to destroy the equities of said companies' grantees, or those whose title was held through them; hence the fifth section sought to protect such transferees."

In Osborn vs. Knight, XXIII., L. D., 216, 221, it was said:

> "Under the repeated rulings of the Department, a settlement claim initiated after the passage of the Act of March 3, 1887, cannot affect the right of the purchaser from the company to make purchase from the United States under the provisions contained in the body of section five of said act. I can see no reason for changing this holding. * * *

"The fifth section of the Act of March 3, 1887, was remedial in its nature, and should be liberally construed to embrace the remedy, viz.: the protection of those who had in good faith bought lands supposed to have passed under a railroad land grant which had, for any reason, been excepted therefrom."

The Unpatented Lands Covered by the Further Decree.

The first twelve sections of the final and further decree relate to some 43,315.67 acres of unpatented land purchased by certain of the individual defendants from the Southern Pacific Railroad Company, and the claims of such individual defendants thereto are controlled by the 5th Section of the Act of Congress of March 3, 1887 (Appendix, p. III.). A table showing the contracts and deeds for these lands, and giving the references to the portions of the record relating to them, will be found at page VIII. of the Appendix.

An examination of this section will disclose that the Government, by permitting the purchaser from the Railroad Company to hold this unpatented land which he has purchased, is not granting to him any extraordinary favor, as the condition of his obtaining a patent is that he

shall pay to the Government the regular market price therefor. In other words, under this section, the Government gets full price for its land, and has simply said to the purchaser that so long as his keeping the land does not interfere with the rights of third persons, but only with the technical claims of the Government, he can continue to hold his land and obtain a patent therefor upon paying to the Government the regular price therefor. Instead of the Government losing by the transaction, it would seem to gain thereby, in view of the fact that it obtained at once a purchaser for its land.

There would seem to be no question as to the good faith of all the purchasers of the unpatented land. Judge ROSS said as this at page 41 of the record :

> " From the evidence in the case, it does not admit of doubt that the respective purchasers of the land now under consideration bought in good faith and in the expectation of receiving through the railroad company, title to the lands purchased. This is shown in part by the contracts and deeds introduced in evidence. That in many instances, only a part of the purchase money has been actually paid is, in my opinion, wholly immaterial."

The Act of February 1896 (Appendix, p. VI.) shows conclusively that want of good faith cannot be argued merely from a part payment of the purchase price of the land, for this statute expressly covers cases in which only a portion of the purchase money has been paid.

It is also to be noticed that Section 3 of the Act of March 2, 1896, speaks of "*bona fide* purchasers * * * by deed *or contract or otherwise* (Appendix, p. XII.);" thus expressly including persons who have bought under contract and paid only a portion of the purchase price.

Upon this point it was said by the Secretary of the Interior in Schneider vs. Linkswiller *et al.*, XXVI., L. D., 407, 409.

> "If the inquiry were confined to the question whether the contract exhibited in this case evidences such a sale as is contemplated by said Act, the matter might be disposed of more briefly, for the Department has, since the passage of said Act, passed upon many similar contracts, and uniformly and invariably treated them as showing a sale or purchase within the meaning of the Act. If the Department had held that such sale or purchase must be absolute, in the sense of a fully-consummated and completed one, in order to be protected, the operation

of the Act would have been very limited and circumscribed. It is a part of the history of the times, that the land-grant companies had sold much of the land within the limits of the grants to immigrants and others, and held out as inducements to such parties contracts giving long credits and requiring moderate annual payments. It was through this policy that vast bodies of land in the public-land States were disposed of to actual settlers and many communities established and built up. This was well known to Congress at the time of the passage of said Act, and it seems certain that such contracts, whether spoken of as sales or purchases; whether fully performed or only partially performed, constitute a part of the subject with which Congress was dealing, and the rights of the so-called purchaser thereunder are within the protection of the statute, if acquired in good faith. If there be any doubt about the correctness of this view of the purpose and intent of the Act of 1887, it is removed by a perusal of the amendment thereto on February 12, 1896 (29 Stat., 6), wherein Congress expressly recognizes partly performed contracts of purchase, like that of Schneider, as constituting a purchase within the meaning of the law.

"It is therefore held that there was a 'purchase' of the tract in question within the meaning of the Act of March 3, 1887".

In Sethman vs. Clise, XVII. L. D. 307, 312, it was said:

> "The Act directed the manner of making adjustments, and it was the evident intention of Congress, as expressed in the 5th section of the Act that when in the adjustment of these grants it was ascertained that land had been bought from the railroad companies for which they could convey no good title, such buyers or their transferees, if *bona fide*, should be allowed to purchase the tracts claimed by them. And it can make no difference, I think, whether a transferee, otherwise entitled to purchase, bought the land before or after the day of the approval of the Act, if it was originially purchased in good faith from any said company."

In the case of John H. Barton *et al.*, XXVI., L. D. 489, 493, the same principle was again asserted.

> "It was a matter of common knowledge at the time of the passage of this Act that the lands claimed by railroads under their grants were to a great extent held and occupied by those who in good faith had entered into contracts providing for the purchase of such lands and payment therefor in five, ten or some other number of annual installments, and conferring upon the purchaser the right to occupy, cultivate and improve the lands from the date of the con-

tract. For many years this had been the prevailing method of disposing of railroad lands, both patented and unpatented.

"In common understanding the word purchaser' includes those who hold lands under such contracts, and the history of this legislation seems to make it quite clear that the word was so used in the act of March 2, 1896. The reasons for protecting those who have obtained deeds, but who have not made full payment, or for protecting those who have made full payment but who have not obtained deeds, apply with equal force to those who, while they have neither made full payment nor obtained deeds, have nevertheless made binding contracts to make complete payment and hold the enforceable obligations of the railroads to execute and deliver deeds and who, on the faith thereof, may have made valuable and permanent improvements upon the land. This view of the language employed insures the equal protection and benefit of the statute to those who from necessity purchased upon long-time contracts providing for small annual payments, and who expected, by the cultivation and use of the land, to obtain the means wherwith to make ultimate payment therefor.

"The Department is of the opinion that one who, under a subsisting contract of the character here described, in good faith, holds lands so erroneously patented or certified, is

a *bona fide* purchaser within the meaning of the Act of March 2, 1896, whose right and title are thereby confirmed. The fact that the time for making some deferred payment has not arrived, or that with the indulgence of the railroad some deferred payment may have been passed, does not alter his status as a purchaser, if, in good faith, he claims the land under a contract which has not been surrendered or otherwise avoided."

In the opinion below of the Circuit Court of Appeals it was said at page 672 of the record:

"With respect to purchasers of land from the railroad company where no patents have been issued by the United States, the Supreme Court in the Winona case indicates that the same broad construction is to be given to the statute to protect honest transactions between the purchasers and the railroad company. The policy pursued by all the land-grant railroad companies contemplated the settlement of the country by immigrants as the roads were being constructed, and to carry out this policy it was necessary for the railroad companies in many instances to furnish settlers seeking to purchase lands supposed to be railroad lands with some evidence of a right to title in a contract of sale, in advance of the transfer of the title by the United States to the railroad companies by patent. This policy and its practical operation has been

> known to the public, and has been frequently commented upon by the courts and the officers of the Land Department of the Government in determining the rights of settlers within the limits of the railroad grants. When, therefore, Congress passed the act of March 3, 1887, providing for the adjustment of land grants made by Congress to aid in the construction of railroads, it had this condition of affairs in view, and dealt with it upon the broad principle that the good faith of the parties in making such contracts should be controlling considerations in determining all questions in controversy."

There being no doubt as to the good faith of the purchasers of this land, there would seem to be no other ground upon which the counsel for the Government can attack the validity of the decree below unless it be the citizenship of the purchasers.

An examination of the record will show that the individual owners of the land at the time the suit was commenced are all citizens of the United States, and it has been held many times by the Department of the Interior, that it is unimportant whether the immediate transferee of the Railroad was a foreigner or not, so long as the owner at the time of the adjustment of the title to the lands was a citizen.

In the case of Sethman vs. Clise, XVII. L. D., 307, 310, Sethman purchased after the date of the Act of 1887, from an original purchaser who was not a citizen. The Secretary of the Interior said:

> "The question has been raised in this case as to whether or not the first purchasers from the company in 1884 were citizens of the United States" (p. 310) "or whether at that time they had declared their intention to become citizens. Sufficient evidence is not before me from which I can determine whether they were citizens or not, or whether their intentions on that subject had been declared. As seen heretofore, their qualifications are not important if the purchasers from them are qualified" (p. 311). * * "And it can make no difference, I think, whether a transferee, otherwise entitled to purchase, bought the land before or after the day of the approval of the Act" (p. 312).

In his instructions of August 30, 1890 (XI., L. D., 229, 230), Secretary Noble, construing the Adjustment Act of 1887, said:

> "The section in question (Sec. 5) was evidently intended by Congress for the benefit of citizens of the United States, or persons having declared their intention to become such, who in good faith shall have purchased lands within the limits of railroad grants and coterminus with constructed

> parts of the roads, with the *bona fide* belief that the company had title thereto. It can make no difference, in my judgment, whether the applicant is the immediate purchaser from the company, or a purchaser one or more degrees removed. If he is a *bona fide* purchaser of the land, and has the required qualifications as to citizenship, he is within the intendment of the statute, *and, if he be not the original purchaser from the Company, it is immaterial what the qualifications of his immediate grantor or the intervening purchasers may have been.* * * *
>
> " It was not in any sense the intention of Congress to confirm sales made by the Company, but rather to afford to citizens, or persons having declared their intention to become such, who were *bona fide* purchasers of the lands to which the Company had no title, a means of acquiring title from the Government, to the exclusion of settlers or purchasers under the general land laws."

The defect in the citizenship of any purchaser of the unpatented land will be urged (if pressed at all by the counsel for the Government) only as against the Atlantic & Pacific Fibre and Importing Company, a foreign corporation, which purchased a large tract of land from the Southern Pacific Railroad Company and paid the money therefor (Record, p. 315 *et seq.*). The

Fibre Company, however, sold this land to Jackson A. Graves (Record, p. 313 and 340), who bought the land in good faith and who is a citizen of the United States, and the Court below, following the decisions of the Department of the Interior, which we have just quoted, held that the citizenship of the Fibre Company, the original purchaser from the Railroad, was immaterial, and that Graves, being a *bona fide* purchaser from the Fibre Company, was entitled to the benefit of the fifth section of the Act of 1887.

The Patented Lands Covered by the Further Decree.

The last thirty-one subdivisions of the further and final decree relate to 9,384.39 acres of land erroneously patented to the Railroad Company, and purchased by certain of the individual defendants. A table giving references to the record relating to the contracts and deeds of this land will be found at page IX. of the Appendix.

The good faith, within the meaning of the adjustment acts as construed by this Court, of the purchasers from the Southern Pacific Railroad Company of this land has been found by both Courts below, and is practically undisputed by the

counsel for the Government, his only argument being that the construction put upon the words *bona fide* by this Court in the Winona cases is wrong.

As to the patented lands we are not met by any questions of citizenship, for the Act of March 2, 1896, extends to all persons, whether citizens or foreigners (Appendix, p. VI.), and we also find on looking at the second section of this act that the Government does not waive anything more than its technical rights any more than it did in the case of its unpatented lands, as, instead of throwing its lands upon the market, it obtains a purchaser therefor in the Railroad Company at the regular market price.

It may possibly be suggested that a purchase of land after the passage of the adjustment acts d d not fall within its provisions, but it has been held by the Interior Department that it does both as to patented and unpatented land.

In Neilsen vs. Central Pacific R. R. Co., XXVI. L. D., 252, a decision by Secretary Bliss, it was said, in the headnote :

> " In the exercise of the right to perfect title under said section [Section 5, Act of March 3, 1887], it is not material whether

the purchase from the company was made before or after the passage of the act, if made in good faith, believing the title to be good, and before the land was held to be excepted from the grant."

The rule heretofore referred to as applicable to the fifth section of the Act of March 3, 1887, has also been enforced in regard to the fourth section of said act, as appears in the case of Carlton Seaver *et al.*, XXIII. L. D., 108, where it was held that it was immaterial whether the purchase of the land was made before or after the passage of the Act of March 3, 1887. It was said, at page 109, as follows:

"It thus appears that the several sections of the act of March 3, 1887, are but different parts of the same scheme, namely, to secure from the railroads a relinquishment or reconveyance to the United States of lands theretofore erroneously certified or patented, and to relieve from loss settlers and *bona fide* purchasers, who, through the erroneous or wrongful disposition of the lands in the grants, by the officers of the Government, or by the railroads, have lost their rights or acquired equities, which in justice should be recognized.

"It has been shown that relief similar to that applied for in the case at bar has been

> granted under the fifth section of the act of March 3, 1887, to transferees; there seems to be no good reason why the same relief should not be granted to an original purchaser under the fourth section thereof."

It would therefore seem clear that all the patented lands involved herein were purchased from the railroad by bona fide purchasers within the meaning of the Adjustment Acts.

POINT II.

The further decree of the court below adjudging that the individual defendants were bona fide purchasers from the railroad company of the lands in question should be affirmed.

L. E. PAYSON,
MAXWELL EVARTS,
Of Counsel for the Appellees.

APPENDIX.

ACT OF CONGRESS OF MARCH 3, 1887.

(24 U. S. STAT., 556.)

An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of the Interior be, and is hereby, authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

SEC. 2. That if it shall appear, upon the completion of such adjustments respectfully, or sooner, that lands have been from any cause heretofore erroneously certified or patented by the United States, to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so reconvey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States

SEC. 3. That if, in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of

any *bona fide* settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws. Provided, that he has not located another claim or made an entry in lieu of the one so erroneously canceled. And provided, also, that he did not voluntarily abandon said original entry. And provided further, that if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to *bona fide* purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to *bona fide* settlers residing thereon.

SEC. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants, respectively, shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands, and in case of neglect, or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suits or suit to be brought against such company for the said amount; provided, that nothing in this act shall prevent any purchaser of

lands erroneously withdrawn, certified, or patented as aforesaid from recovering the purchase money therefor from the grantee company, less the amount paid to the United States, by such company as by this act required; and provided, that a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions.

SEC. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company; it shall be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said *bona fide* purchaser, his heirs or assigns: Provided, that all lands shall be excepted from the provisions of this section which at the date of such sales were in the *bona fide* occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: Provided Further: That this section shall not apply to land settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

SEC. 6. That where any such lands have been sold and conveyed, as the property of any railroad company, for the State and county taxes thereon, and the grant to such company has been thereafter forfeited, the purchaser thereof shall have the prior right, which shall continue for one year from the approval of this Act, and no longer, to purchase such lands from the United States at the Government price, and patents for such lands shall thereupon issue: Provided, that said lands were not, previous to or at the time of the taking effect of such grant, in the possession of or subject to the right of any actual settler.

SEC. 7. That no more lands shall be certified or conveyed to any State, or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which said State, corporation or individual would be rightfully entitled.

Approved March 3, 1887.

V

ACT OF CONGRESS, FEBRUARY 12, 1896.

(29 U. S. STAT., 6.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of an act entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March third, eighteen hundred and eighty-seven, be, and the same is hereby, amended by adding thereto the following proviso: "Provided, further, That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the Government a sum equal to the difference between the portion of the purchase price so paid and the Government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser."

Approved, February 12, 1896.

ACT OF CONGRESS OF MARCH 2, 1896.

(29 U. S. STAT., 42.)

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress, and amendments thereto, is extended accordingly as to the patents herein referred to. But no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: Provided, That no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers to withdraw the same from sale or entry.

SEC. 2. That if any person claiming to be a *bona fide* purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a *bona fide* purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee or the corporation, company, person, or association of persons, for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the *bona fides* of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a *bona fide* purchaser, but

who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a *bona fide* purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons, for whose benefit the certification was made for the value of the land as hereinbefore provided. Any *bona fide* purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such *bona fide* purchaser in any United States court having jurisdiction of the subject-matter, or at his option as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the Forty-ninth Congress.

SEC. 3. That if at any time, prior to the institution of suit by the Attorney-General to cancel any patent or certification of lands erroneously patented or certified, a claim or statement is presented to the Secretary of the Interior by or on behalf of any person or persons, corporation or corporations, claiming that such person or persons, corporation or corporations, is a *bona fide* purchaser or are *bona fide* purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim i investigated in said Department of the Interior ; and if it shall appear that such person or corporation is a *bona fide* purchaser as aforesaid, or that such persons or corporations are such *bona fide* purchasers, then no such suit shall be instituted, and the title of such claimant or claimants shall stand confirmed ; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person or association of persons, for whose benefit the patent was issued or certification was made for the value of the land, as hereinbefore specified.

Approved March 2, 1896.

Reference to Contracts, Deeds, and proofs showing bona fide purchases under Act of March 3rd, 1887, of unpatented lands.

Decree.		Contract.			Deed.			Ref. to Trans.		Remarks.
Item.	Person.	No.	Date.	Tr.	No.	Date.	Tr.	Bona fides.	Citizenship.	
1	George Loomis	10077	25 Apr. '89	222				200	190	Purchased by Loomis in trust for Pac. Coast Oil Co. (Tr. 190, 220).
		10320	8 May '90	234						
		10321	" " "	240						
		10322	" " "	245						
		10323	" " "	250						
		10324	" " "	255						
		10325	" " "	260						
		10326	" " "	266						
		10327	" " "	271						
		10328	" " "	276						
		10329	" " "	281						
		10330	" " "	287						
		10331	" " "	292						
		10332	" " "	297						
		10333	" " "	303						
2	Pac. Coast Oil Co.				9416	3 Mar., '88	228	200	190	
3	Jackson A. Graves	4720	23 July, '85	321				313	308	These contracts were issued to the At. & Pac. Fibre & Imp. Co., a foreign Co. Assigned to Graves Jany. 27, '93 (Tr. 343).
		4721	" " "	327						
		4723	" " "	333						
4	Mary L. Gould	4726	25 July, '85	379				377·8	371 6.8	
5	M. W. Stimson	8861	22 Dec., '87	347				348-9	347	
		8862	" " "	348						
6	Chas. M. Stimson	8863	" " "	365				364	362	Assigned to McVay, July 15, '89 (Tr. 369).
7	Daniel D. Brunk	4724	24 July, '85	427				425-6	423	Assigned to Painter, Oct. 13, '86 (Tr. 431).
8	Stefano Cuneo	4487	30 Mar., '85	437				435-6	433	
9	G. Suraco	4488	" " "	445				443-4	442	
10	Wm. H. Carlson	4102	22 Nov., '84	456				452-3	450	Ass'd to Furnival, 19 Nov., '86 (Tr. 462).
		6009	1 Nov., '86	463				476	470	Ass'd to Furnival, 26 Nov., '90 (Tr. 468).
11	Thos. F. Mitchell	4452	18 Mar., '85	479				485	484	
12	Ramon Perea	5738	1 July, '86	486						

... bona fide purchases under Act of March 2nd, 1896, of patented lands.

12	Ramon Perea	5738	1 July, '86	486									485	484	

Reference to Contracts, Deeds, Patents and Proofs showing bona fide purchases under Act of March 2nd, 1896, of patented lands.

Decree.		Contract.			Deed.			Ref. to Trans.		Patents.			Remarks.
Item.	Person.	No.	Date.	Tr.	No.	Date.	Tr.	Bona fides.	Citizenship.	No.	Date.	Tr.	
13	Jackson A. Graves				4719	23 July, '85	315	313	308	1	Mch. 29, '76	644	Conveyed to Graves, Jany. 27, '93 (Tr. 343).
14	D. M. Sutherland	7875	28 July, '87	503				496–7	492	1	" " "	"	
					7873	19 July, '93	497	495	492	1	" " "	"	See Item 19, Stipulation (Tr. 7).
15	Clarence T. Cleve	5880	27 Aug., '86	7	5880	12 Aug., '90	513	509–10		1	" " "	"	See Item 20, Stipulation (Tr. 7).
16	Peter Hamilton Mrs. Thos. Allison	3057	14 Jany., '84	8	3057	18 Jany., '89	528	521–2		9	Jany. 9, '85	662	See Item 21, Stipulation (Tr. 8).
17	William Ferguson James Hamilton	3053	14 Jany., '84	8	3053	18 Jany., '89	542	535–6		9	" " "	"	See Item 22, Stipulation (Tr. 8).
18	Ira H. Bradshaw	5878	26 Aug., '86	8	5878	29 Sept., '87	553	549–50		1	Mch. 29, '76	644	See Item 23, Stipulation (Tr. 8).
19	Peter Cook M. L. Wicks Alexander Cook				3062	21 June, '87	632	625		9	Jany. 9, '85	662	Alexander Cook assigned to Peter Cook, 17 Nov., '87 (Tr. 634).
20	Mary L. Gould				4172	28 Jany., '90	386	378	376	6	Dec. 27, '83	657	No appeal as to remaining lands (Tr. 11).
21	Will D. Gould	7973	8 Aug., '87	403	7872	8 Aug., '72	407	378	371	2	April 4, '79	653	
								"	"	2	" " "	"	
22	James M. Hait				4168	7 May, '88	412	377–8	376–8	6	Dec. 27, '83	657	Conveyed to W. D. Gould, 15 Mch., '88 (Tr. 418, 420).
23	Richard Dillon John Kenealy				2839	2 Oct., '86	562	561	559	2	April 4, '79	653	
24	J. Garber McH. Pierce	9205	30 Jany., '88	9	9205	28 Jany., '90	578	576	574–7	1	Mch. 29, '76	644	See Item 25, Stipulation (Tr. 9).
25	Nathan Cole, Jr.	4687	24 June, '85	9	4687	7 Jany., '92	589	586–7	584	1	" " "	"	See Item 26, Stipulation (Tr. 9).
26	Jacob Harps	3863	14 Aug., '84	10	3863	7 Oct., '87	600	596–7	595	6	Dec. 27, '83	657	See Item 27, Stipulation (Tr. 10). Appeal waived (Tr. 11).
27													
28	Pablo Lopez				859	11 July, '87	608	608	606	2	April 4, '79	653	
29	Jessie M. Blanchard				2140	12 Mch., '87	617	616–17	614	2	" " "	"	
30	Richard Dillon				2817	2 Oct., '86	567	561	559	2	" " "	"	Stip. test. of Dillon same as Kenealy. Appeal waived (Tr. 11).
31													Appeal waived (Tr. 11).
32													Appeal waived (Tr. 11).
33													

Office Supreme Court U.S.
FILED
MAR 23 1901
JAMES H. McKENNEY,
Clerk.

No. 186. 25

Brf. of Brainard for Appellee Loomis

Filed March 23, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 186.

THE UNITED STATES, APPELLANT,

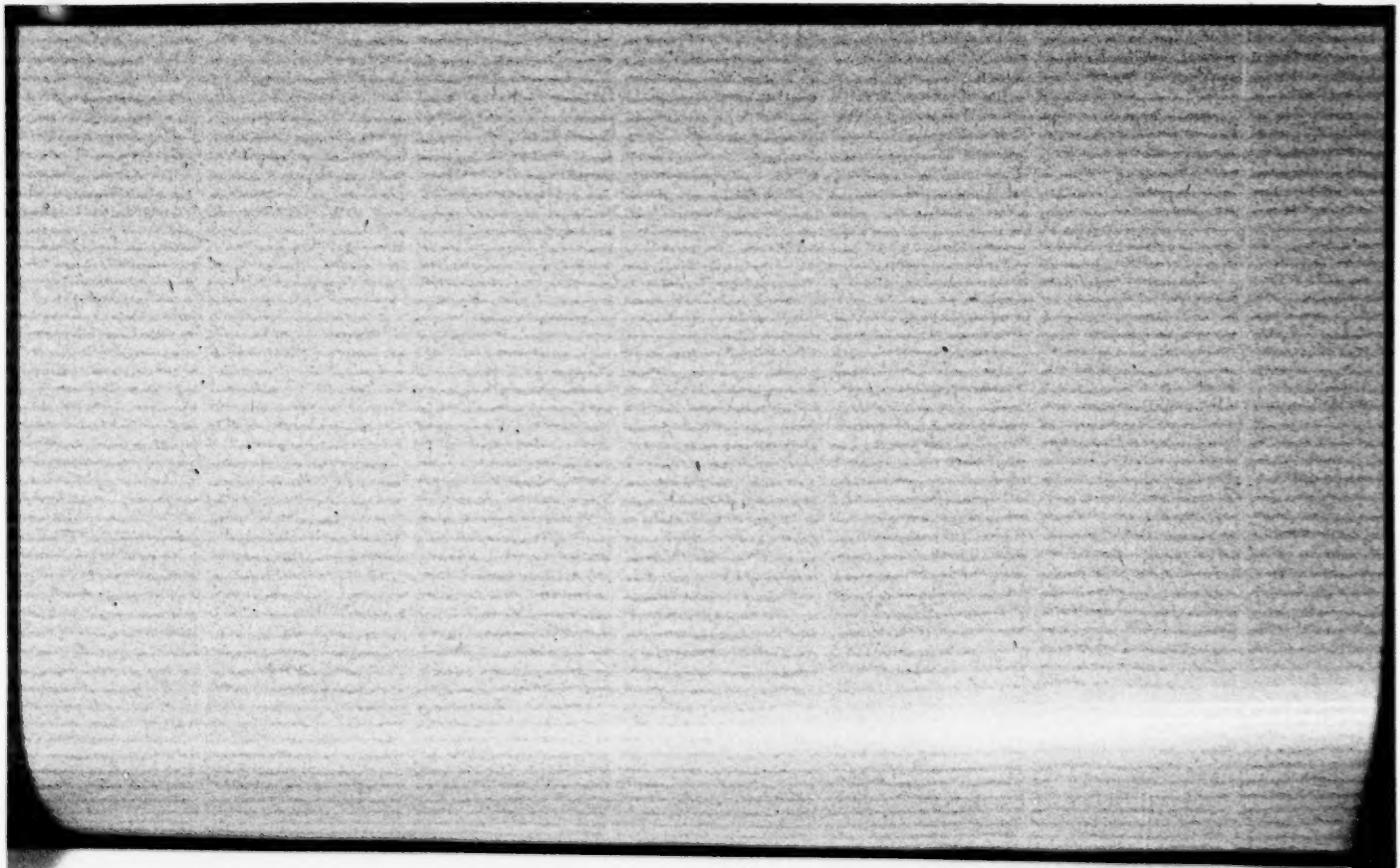
vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, GEORGE LOOMIS ET ALS., APPELLEES.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

ARGUMENT FOR THE DEFENDANT GEORGE LOOMIS.

M. D. BRAINARD,
Attorney for Appellee.



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THE SOUTHERN PACIFIC RAILROAD COMPANY, GEORGE LOOMIS ET ALS., APPELLEES.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

ARGUMENT FOR THE DEFENDANT GEORGE LOOMIS.

At the trial of this case the defendant George Loomis, in answer to the bill of complaint of the United States, alleged that he was a *bona fide* purchaser of the lands claimed by him as trustee for the Pacific Coast Oil Company, from the Southern Pacific Railroad Company, and as such purchaser was entitled to purchase the lands from the United States, and to a patent therefor, under Section 5, of an Act of Congress approved March 3, 1887. (24 Stat., 556.)

The final decree of the United States Circuit Court sustained this defence and affirmed the right of the defendant to purchase the lands from the United States under the Act of March 3, 1887, as claimed. (Record, p. 50.)

The United States Circuit Court of Appeals, for the Ninth Circuit, affirmed this decree and held that the defendant, Loomis, and others whose claims were of the same class and character, were *bona fide* purchasers from the railroad company, and as such were entitled to make payments to the United States for the land and secure a patent therefor as provided by law. (Record, pp. 669, 672.)

Before the trial court the defendant introduced testimony in support of his claim that the purchase of the lands from the railroad company was made in good faith.

D. G. Scofield, who had been Vice-President of the Pacific Coast Oil Company since 1884, testified that the lands were purchased and paid for by the said company in good faith, and that said company entered into possession of them under the contracts of purchase and had paid the taxes levied on them since the date of the purchase, and had expended $150,000 to $160,000 in improvements upon them.

The Southern Pacific Railroad Company represented to the Pacific Coast Oil Company, and to George Loomis, that it was the owner of the lands at the time the contracts and deeds were entered into and executed, and the purchasers relied on those representations in making the purchase, and also upon the advice of their attorney, who advised them that the titles were good in the railroad company.

The purchasers had no notice of any contest being in existence between the government and the Southern Pacific Railroad Company with reference to these lands at the time of the purchase.

The several deeds and contracts relating to the lands purchased by the defendant Loomis are attached to this testimony as exhibits, and they show that two of the same were made before this action was commenced, and the others were made after the commencement of the action. (Record, pp. 190 to 307.)

The testimony of the witness Scofield is corroborated by that of the witness Jerome Madden, who was the Land Commissioner for the Southern Pacific Railroad Company who made the sales of the lands to Loomis, who testified that he considered that every person who bought from the railroad company bought in absolute good faith, and that he bought some of the unpatented lands himself. (Record, pp. 639, 640.)

It is shown by the testimony of the witness Madden that in the year 1883 the railroad company commenced selling these unpatented lands to the people and that they bought in good faith, and paid in good faith. (Record, pp. 638, 639, 640, 641.)

There are but three of the assignments of error in the decree appealed from which it is deemed necessary to discuss, viz: In the fourth (4) assignment of error it is claimed that the court erred in adjudging that the defendants who purchased lands from said railroad company subsequent to November 22, 1889, the date of the commencement of the suit of the United States *vs.* the Southern Pacific Railroad Company which was finally decided by the Supreme Court on December 12, 1892, and is reported in 146 U. S., 615, were not charged with notice thereby of the right and title and claim of the United States to the lands, and in consequence of such notice were not *bona fide* purchasers.

In the sixth (6) assignment of error it is claimed that the court erred in refusing to adjudge that those defendants who purchased unpatented lands from the railroad company by executory contracts, where only part of the purchase money was paid, and where the contract contained a provision that the purchase money should be refunded in case the company did not secure a patent for the lands, were not thereby charged with notice of the right and title of the United States to the lands.

In the seventh (7) assignment of error it is claimed that the court erred in adjudging that any defendant who purchased unpatented land on a contract with the railroad company and agreed to pay for the land in installments is a "purchaser" within the meaning of the Act of March 3, 1887, or the Act of March 2, 1896, it appearing that the procurement of the patent from the United States was a condition precedent to said sale.

The fourth (4) assignment of error is that the defendants are not *bona fide* purchasers because they were charged with notice of the suit commenced by the United States on November 22, 1889, to recover the lands, and they purchased them after the commencement of that suit.

As a general proposition of law, a *bona fide* purchaser is one who purchases in good faith, without notice, and for a valuable consideration, and if he purchases *lis pendens*, he will be bound by the judgment in the pending action, but the defendants here are not claiming the title to the land from the railroad company under and by virtue of the purchase, but are asserting a right to purchase the same from the United States under the provisions of an independent remedial act of Congress, which, they contend, applies to purchasers *in good faith for value*, and that the question of notice of defect in the title at the time of purchase does not, from the special circumstances of the case, enter into the transactions, because the meaning of the words *bona fide* purchaser, as used in this Act of Congress of March 3, 1887, and as used on other transactions of like character, is not the same.

The right of these defendants to purchase the lands bought by them from the railroad company is based upon Section 5, of the Act of Congress of March 3, 1887, which is as follows:

"Sec. 5. That where any said company shall have sold to citizens of the United States, or to persons who have

declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections described in the grant and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and thereupon patents shall issue therefor to the said *bona fide* purchaser, his heirs or assigns." (24 Stat., p. 556.)

The first official construction of the Act of March 3, 1887, is to be found in the opinion of Attorney-General Garland, addressed to the Secretary of the Interior on November 17, 1887, in which the Attorney-General said:

"The whole scope of the law from the second to the sixth section, inclusive, is remedial. Its intent is to relieve from loss settlers and *bona fide* purchasers, who, through the erroneous or wrongful disposition of the lands in the grants by the officers of the government, or by the railroads, have lost their rights or acquired equities, which in justice should be recognized. That the sections sold by the railroad company shall have been approved, is not required by the fifth section, nor that it shall have been patented. That the land shall have been approved to the company, before the purchasers shall be entitled to the benefit of the sixth section, is not required. By the words of the act, the only requisite established, to entitle those wronged to its benefit, is, that they shall be citizens of the United States, or have declared their intention to become citizens; that it shall have been sold to them by a railroad company as part of its grant; that the land shall not have been conveyed to or for the use of the company; that the lands shall be of the numbered sections prescribed in the grant, and coterminous with constructed parts of the road; and that the purchasers shall have bought in good faith. It was not intended to limit the redress to cases in which the railroad could rightfully have sold the lands. The

whole remedial part of the law was passed with a recognition of the fact that the railroad companies had sold lands to which they had no just claim. The fifth section expressly refers to such lands as had been sold, which had not been conveyed 'to or for the use of such companies.' It is not required that the sale by the railroad companies shall have been made on its part in good faith, but only that the purchaser shall have bought in good faith. That it was sold under a claim of grant to another in good faith is the ground of his equity. In order that the remedy may be adequate to redress the wrong, the word 'grant,' in the fifth section must be construed to include, as it does in the preceding sections of the act, both primary and indemnity limits." (6 Land Decisions, Int. Dept., 272.)

It will be observed that the Attorney-General correctly held this statute to be remedial in character, and it is an elementary rule of law that statutes of this character are to be construed liberally for the suppression of the mischief and the advancement of the remedy. (American and English Encyclopedia of Law, 1st Edition, Vol. 23, p. 414, and cases cited.)

It was also said by the Attorney-General that it is not required that the sale by the railroad company shall have been made on its part in good faith, but only that the purchaser shall have bought in good faith, which fact constituted the ground of his equity. The whole right of the purchaser from the railroad company to purchase from the government under this section of the Act of 1887, is here said to be based upon the good faith of the purchase from the company, and the question of notice of defect in the title is ignored as immaterial.

This construction has been the rule of action of the Land Department in the execution of this act from the outset. In the case of the United States *vs.* Winona and St. Peter Railroad Company, it was sought to apply a narrow rule of construction to this act by urging that one who had

notice was not a *bona fide* purchaser, but this court declined to accept that view of the matter, and one of the unanswerable reasons assigned by the court for its action was, that *bona fide* purchasers, in the technical legal acceptation of those words, were already fully protected by the law of the land and did not require the aid of this act to maintain their legal rights; and hence, the Act of March 3, 1887, must have been intended to extend relief to such purchasers as had bought railroad lands in good faith, for a valuable consideration, although they were not technically *bona fide* purchasers.

In that case this court said:

"It is true the term used here is '*bona fide* purchaser' but it is a *bona fide* purchaser from the company, and the description given of the lands, as not conveyed and 'for any reason excepted from the operation of the grant,' indicates that the fact of notice of defect of title was not to be considered fatal to the right. Congress attempted to protect an honest transaction between a purchaser and a railroad company even in the absence of a certification or patent. These being the provisions of the Act of 1887, the Act of 1896, confirming the right and title of a *bona fide* purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest sense a '*bona fide* purchaser,' has nevertheless purchased in good faith from the railroad company." (165 U. S., p. 463.)

This decision seems to be conclusive upon the question of notice.

The sixth (6) assignment of error is that the court erred in refusing to adjudge that the defendants who purchased unpatented lands by executory contracts, where only part of the purchase money was paid, and where the contract provided that the purchase money should be refunded in case the company did not secure a patent for the land,

were not thereby charged with notice of the "right and title of the United States to said lands."

In answer to this point it is only necessary to say that at the time Mr. Loomis purchased these lands the railroad company claimed an equitable right to those in the indemnity limits which had been selected in lieu of lands lost in the granted limits, and it claimed the lands in the granted limits of the road as lands *in place* under the terms of a present grant by Congress, which took effect on those lands upon the filing of the map of definite location of the road in the General Land Office. The parties to the purchase knew that the lands had not been patented and that the equitable right was in the company, and the legal title was in the United States, and would remain there in trust for the benefit of the company, until the patents issued; but as it was possible that the lands might be excepted out of the grant for some of the causes specified in the granting act, or that the Secretary of the Interior in the exercise of his discretion might cause the patenting of other indemnity lands which might satisfy the deficiencies in the granted limits in full, without recourse to the lands which had been purchased, the condition for the return of the purchase money was inserted in the contracts as a plain and fair business proposition. If the purchasers knew at that time that the legal title to the lands was in the United States, they believed that it was held in trust for the benefit of the company and would be ultimately conveyed to the company, and this fact does not militate against their good faith in buying the lands, and notice of such a condition of title was not material as in any wise affecting their *status* as good faith purchasers under this act, for it is immaterial whether they knew that the title was then in the United States or not, and the foregoing argument on the question of notice applies with full force to this exception.

It is clear that at the time Mr. Loomis purchased these lands he believed that the *right to the title* was in the railroad company, for he was so advised by counsel, and at that time the decisions of the United States Circuit Court for the Southern District of California in the cases of United States *vs.* Colton Marble and Lime Company, and the Southern Pacific Railroad Company, rendered by two of the ablest jurists that ever occupied the bench in California, stood unreversed in favor of the right of the railroad company to these lands. (146 U. S., 615.)

In the seventh (7) assignment of error it is claimed that the court erred in adjudging that a defendant who purchased lands on a contract with the railroad company, and agreed to pay for the land in installments was a "purchaser," within the meaning of the Act of March 3, 1887, or the Act of March 2, 1896, it appearing that the procurement of the patent from the United States was a condition precedent to said sale.

It is claimed on behalf of the defendants that the word "purchaser," as used in the 5th Section of the Act of 1887, was used in the common and ordinary understanding of the word in this remedial legislation, and that it applies, and was intended to apply to all parties who held the lands under contracts of purchase and are commonly termed purchasers.

The Act of March 3, 1887, and the Act of February 12, 1896, and the Act of March 2, 1896, are all *in pari materia*, and were all intended by Congress to afford new remedies and relief to citizens who had bought lands from railroad companies, in good faith for value, which the companies had no right to sell.

The Act of February 12, 1896, is an amendment to ~~the Act of~~ Section 4, of the Act of March 3, 1887, and the proviso thereof is as follows:

"*Provided further*, That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the government a sum equal to the difference between the portion of the purchase price so paid and the government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser." (29 Stat., 6.)

It will be observed that the word "purchaser" is used in this amendment to the Act of March 3, 1887, to describe one who has not paid but part of the purchase money.

The 3d Section of the Act of March 2, 1896, expressly refers to *bona fide* purchasers as those claiming by "deed or contract, or otherwise." (29 Stat., p. 42.)

In the case of United States *vs.* Freeman, this court said:

"The correct rule of interpretation is, that, if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts *in pari materia*, are to be taken together as if they were one law. (Doug., 30; 2d Term Rep., 387, 586; 4 M. and Selw., 210.) If a thing contained in a subsequent statute, be within the reason of a former statute, it shall be taken to be within the meaning of that statute. (Lord Raym., 1028.) And if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute." (3 Howard, p. 563.)

The remedial purposes which prompted the enactment of the Act of March 3, 1887, made it absolutely necessary that the word "purchaser," should be broadly and liberally construed in order to afford relief to all citizens whose claims fell within the mischief complained of, and if the scope and operation of the act was confined to those persons

only, who had paid for the lands in full, and held deeds to the lands from the railroad companies, the act would be of little benefit to the great mass of the purchasers of the unpatented lands, and in fact its operation as a remedial statute would be substantially valueless.

The legislative construction placed upon the word "purchaser" by the subsequent acts of Congress leaves no doubt that the term was used in the broad sense in which it is used in the every day transactions of men, and not in a narrow and technical sense, and the later acts are clearly *in pari materia* with the Act of March 3, 1887, and show clearly that all who bought in good faith for value, whether they paid in full or not, and whether they held under deeds or contracts were "purchasers," within the intention and meaning of this legislation.

This is the construction placed upon the matter by the Land Department. (Case of John H. Barton *et al.*, 26 Land Decisions, p. 489.)

Admitting for the purposes of the argument that the sale of the land was a sale upon condition precedent, it was nevertheless a sale and purchase within the meaning of the 5th Section of the remedial Act of March 3, 1887, and that statute applied to lands which were "for any reason excepted from the operations of the grant to said company," which had been bought by purchasers in good faith for value. Congress knew at the time of the passage of the act that the railroad companies had no title to these unpatented lands and had no power or authority in law to convey a good title to any purchaser, and that all sales of unpatented lands must necessarily have been conditional sales, for no other kind of a sale was possible under the existing conditions. It is impossible, therefore, to subject this class of purchasers to the rigid rules of law which apply to ordinary purchases of real property and give any

force or effect to the legislation passed for their benefit and relief.

The fact that the purchasers did not pay all of the purchase money to the vendor is not material, because when this court decided that the lands were excepted from the railroad grant it become impossible for the company to make them a title to the purchased lands, and they were not obliged by law to complete the payments, but this did not in any manner militate against the good faith in which the original purchase was made, or affect their status as purchasers under the Act of 1887.

Respectfully submitted,

M. D. BRAINARD,

Attorney for George Loomis, Defendant in Error.

Supreme Court of the United States.

No. 25.—October Term, 1901.

The United States, Appellant,
vs.
The Southern Pacific Railroad Company, George Loomis, et al.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

[January 27, 1902.]

This is a continuation of the case which was before this court and decided in 1897. (168 U.S. 1.) It was brought to quiet the title of the government to some seven hundred thousand acres of land within the limits of the forfeited grant to the Atlantic and Pacific Railroad Company, and claimed by the defendants under certain junior grants to the Southern Pacific Railroad Company. The decree in the Circuit Court quieted, as against the Southern Pacific Company, the title of the government to all the lands. The other defendants asserted title or claimed rights to certain portions of the land by virtue of conveyances from or contracts with the Southern Pacific Company, and the decree provided: "Nor shall this decree in anywise affect any rights which the defendants, or any of them, other than the said Southern Pacific Railroad Company, now have or may hereafter acquire in, to or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes,' approved March 3, 1887."

This decree was affirmed by this court so far as the Southern Pacific Company as well as the trustees in its mortgage were concerned, the court saying, in reference to that portion of the decree just quoted (p. 65.):

"Instead of leaving undetermined the matters in dispute between the United States and the defendants other than the Southern Pacific Railroad Company, the Circuit Court should have determined, by its final decree, what rights those defendants have by virtue of the above act of March 3, 1887, (24 Stat. 556, c. 376.) in the lands or any of them now in dispute and claimed by the United States. The effect of the decree is to leave undetermined the question whether the defendants who claim under the Southern Pacific Railroad Company are protected by that or any other act of Congress. The government was entitled to a decree quieting its title to all the lands described in its pleadings, except those, if any, that are protected, in the hands of claimants, by acts of Congress. (*United States* v. *Winona & St. Peter Railroad*, 165 U. S. 463; *Winona & St. Peter Railroad* v. *United States*, 165 U. S. 483.) But as the government has not appealed, the decree cannot be reversed for the error of the Circuit

Court in not finally disposing of the issues between the United States and the individual defendants who claim under the Southern Pacific Railroad Company.

"*The result is that the decree must be affirmed in all respects as to the Southern Pacific Railroad Company, as well as to the trustees in the mortgage executed by that company, and affirmed also as to the other defendants, subject, however, to the right of the government to proceed in the Circuit Court to a final decree as to those defendants, and it is so ordered.*"

On the return of the mandate to the Circuit Court the United States dismissed their bill against the defendants other than the railroad company and its mortgage trustee without prejudice as to all, except certain specified tracts, amounting in the aggregate to about 52,600 acres, of which amount 9,284 were patented by the United States to the Southern Pacific, the patents bearing date March 29, 1876, April 4, 1879, December 27, 1883, and January 9, 1885, and 43,315 remained unpatented. In respect to these tracts the case proceeded to final hearing, which resulted in a decree in favor of the defendants, (88 Fed. Rep. 832,) confirming their title to the lands patented, and adjudging them *bona fide* purchasers within the meaning of the act of Congress of March 3, 1887, of the lands not patented. From this decree the United States appealed to the Court of Appeals for the Ninth Circuit, which affirmed the decree, (98 Fed. Rep. 45,) and thereupon the United States brought the case here on appeal.

Mr. Justice BREWER delivered the opinion of the Court.

The questions now to be determined arise between the United States and parties holding title or claiming rights to lands by deed from or contract with the railroad company. The title of the company having been adjudged void, the defendants rely upon the acts of Congress of March 3, 1887, (24 Stat. 556,) February 12, 1896, (29 Stat. 6,) and March 2, 1896, (29 Stat. 42.) These acts were passed for the purpose of upholding the titles of parties who in good faith had purchased from railroad companies lands, which though supposed to be part of their grants, proved not to be so. This legislation was fully considered in *United States* v. *Winona &c. Railroad Company*, (165 U. S. 463,) and *Winona &c. Railroad Company* v. *United States*, (Id. 483,) and any further discussion of its scope is unnecessary. In respect to it we said:

"The act of 1896, confirming the right and title of a *bona fide* purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest sense a '*bona fide* purchaser,' has nevertheless purchased in good faith from the railroad company.

* * * * * *

"Our conclusion is that these acts operate to confirm the title to every purchaser from a railroad company of lands certified or patented to or for

its benefit, notwithstanding any mere errors or irregularities in the proceedings of the Land Department, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the land grants, although within the limits of the grants, excepted from their operation, providing that he purchased in good faith, paid value for the lands, and providing, also, that the lands were public lands in the statutory sense of the term, and free from individual or other claims." (p. 481.)

In the present case the deeds to the patented lands were executed by the company at different dates, commencing July 23, 1885, and ending July 19, 1892. These lands were apparently within the grant made to the Southern Pacific by the act of March 3, 1871, (16 Stat. 573;) that is, they were public lands in the statutory sense of the term along the line of the Southern Pacific as authorized by that act and within the place or indemnity limits of the grant. The road had been constructed, and the Land Department of the United States, the tribunal charged with the duty of administering the public lands, had decided that the company had earned the lands and had caused patents therefor to be issued to it. No third party claimed title; either the government or the company was the owner. Under those circumstances the purchasers bought the lands; bought them in good faith; paid value for them.

These facts bring the case within the first section of the act of March 2, 1896, as heretofore construed by us: "But no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed."

Against this conclusion, it is contended that purchasers with notice that the government questioned the company's title to these lands are not *bona fide* purchasers. And counsel say that "in the year 1886 every department of the government began to operate to protect the title of the United States to these lands, and in every public way gave notice to the world of the rights of the government to them," enumerating the act of Congress of July 6, 1886, forfeiting the grant to the Atlantic and Pacific Company; various rulings of the Interior Department, from that on June 7, 1887, (*Gordon* v. *Southern Pacific R. R. Co.*, 5 Land Dec. 691,) to the date of the last deed, to the effect that the lands granted to the Atlantic and Pacific were not operated upon by the subsequent grants to the Southern Pacific, and were by the forfeiture act restored to the public domain; and the commencement of the several suits by the government to establish its title to these lands and others similarly situated. Counsel also refer to *Winona &c. Railroad Co.* v. *United States*, *supra*, in which it was held that one cannot claim to be a purchaser in good faith from a railroad company if at the time he has notice of facts outside the records of the Land Department disclosing a prior right in some third party.

But we do not think a mere change in the opinions of the officers of the government, as to the validity of the company's title, although made known

to parties proposing to purchase from such company, is sufficient to take away from them the protection of good faith. A party may have notice of conflicting claims and still, in the exercise of an honest judgment as to the rightful owner, buy property and pay for it, and be acting in good faith. So far as suits are concerned, all the decisions of the courts had been up to the date of the last deed in favor of the title of the company. Thus the purchasers had not merely the action of the Land Department in issuing the patents, but all past decisions of the courts, justifying their conclusions. The conditions are not like those in *Winona &c. R. R. Co.* v. *United States*. That was a suit to cancel a certification of a tract of land made for the benefit of a railroad company and also a deed from it. The certification was wrongfully made, and the company in fact took no title. The purchaser sought protection under these statutes. Before any certification, or any pretence of right in the company, as well as at the time of the conveyance to its grantee, there was and had been for many years a party in actual possession of the land under a title *prima facie* regular and valid, and it was held that the grantee, charged with notice of that occupancy and that claim of title, could not be adjudged a *bona fide* purchaser from the railroad company within the meaning of the statute. "The statute was not intended to cut off the rights of parties continuing after the certification, and of which at the time of his purchase the purchaser had notice. Only the purely technical claims of the government were waived." Nothing of that kind appears here; no independent and outside facts are shown, no title in any third party—simply a change of opinion on the part of the officers of the government as to the validity of the title of the Southern Pacific Company, and it would be harsh, indeed, if remedial statutes like these were shorn of their beneficent application by reason of the fact that the officials of the government had changed their views of the law. We think the Circuit Court was right in confirming the title to the lands patented.

With reference to the unpatented lands, they, like the former, were so situated with respect to the constructed road of the Southern Pacific as to be apparently within the scope of its grant, and the same general comments are appropriate here as in reference to the patented land. The act of 1896 refers only to lands patented or certified, and the parties who contracted with the company for unpatented lands must rely for protection upon the act of 1887. Most of the transactions in respect to them were after the date of this act, and it is contended that it is not prospective in its operation and only purports to protect prior transactions.

The ruling of the Land Department has been to the contrary effect. In *Sethman* v. *Clise*, (17 Land Dec. 307,) a purchase from the railroad company was made prior to the act of 1887, but after the act the pur-

chaser conveyed to a transferee, and it was held that the latter was entitled to relief under the statute.

"The act directed the manner of making adjustments, and it was the evident intention of Congress, as expressed in the fifth section of the act, that when, in the adjustment of these grants, it was ascertained that land had been bought from the railroad companies for which they could convey no good title, such buyers or their transferees, if *bona fide*, should be allowed to purchase the tracts claimed by them. And it can make no difference, I think, whether a transferee, otherwise entitled to purchase, bought the land before or after the day of the approval of the act, if it was originally purchased in good faith from any said company." (p. 312.)

In *Andrus et al.* v. *Balch*, (22 Land Dec. 238,) was presented the case of a purchase from the railroad company after the act of March 3, 1887, and it was held that that did not prevent the operation of the act. The same proposition was reaffirmed in *Briley* v. *Beach et al.*, (22 Land Dec. 549;) *Carlton Seaver et al.*, (23 Land Dec. 108;) *Grandin et al.* v. *La Bar*, (25 Land Dec. 194;) *Neilsen* v. *Central Pacific Railroad Company*, (26 Land Dec. 252.) There has been no decision to the contrary. This uniform ruling and practice of the Land Department would, in case of doubt, be of great weight in determining the true construction of the act. (*Knowlton* v. *Moore*, 178 U. S. 41, 56, 92; *Fairbank* v. *United States*, 181 U. S. 283–306.)

But the act itself bears upon its face evidence that it was not intended to be limited to cases of purchases from the railroad company prior to its date. While the first section directs the Secretary of the Interior "to immediately adjust" the several land grants, section 3 provides "that if, in the adjustment of said grants, it shall appear that the homestead or preemption entry of any *bona fide* settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws." This seems to imply an intent that all mistakes of the nature referred to which shall have occurred up to the very completion of the adjustment may be rectified. Section 4 makes provision for the issue of patents to certain purchasers from railroad companies, providing proof shall be made "within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted." While other sections may not be so specific, yet placing them alongside of those from which quotations have been made it is reasonable to hold that the act applies not merely to transactions had before its date, but to any had before the time of final adjustment. In this case the several grants to the Southern Pacific have not yet been finally adjusted. Further, it must be borne in mind that this is a remedial statute, and is to be construed liber-

ally, and so as to effectuate the purpose of Congress and secure the relief which was designed, and the mere date of the transaction between the purchaser and the railroad company is not of itself vital in determining whether there is or is not an equity in behalf of the purchaser. As said in Potter's Dwarris on Statutes, 231:

"A remedial act shall be so construed as most effectually to meet the beneficial end in view, and to prevent a failure of the remedy. As a general rule, a remedial statute ought to be construed liberally. Receiving an equitable, or rather a benignant, interpretation, the letter of the act will be sometimes enlarged, sometimes restrained, and sometimes it has been said the construction made is contrary to the letter; which should be read—*ultra* the letter, and confined to ancient statutes."

See also the letter of Attorney General Garland to the Secretary of the Interior, in response to a question as to the true construction of this act. (6 Land Dec. 275.)

"The whole scope of the law from the second to the sixth sections, inclusive, is remedial. Its intent is to relieve from loss settlers and *bona fide* purchasers who, through the erroneous or wrongful disposition of the lands in the grants, by the officers of the government, or by the railroads, have lost their rights or acquired equities. . . . The fifth section expressly refers to such lands as had been sold, which had not been conveyed 'to or for the use of such companies.' It is not required that the sale by the railroad companies shall have been made on its part in good faith, but only that the purchaser shall have bought in good faith. That it was sold under a claim of the grant to another in good faith is the ground of his equity."

The remaining question arises on the ruling that one of the defendants, Jackson A. Graves, was a *bona fide* purchaser, and entitled to the protection of the fifth section of the act of March 3, 1887, and affects something like thirty-five thousand acres. These were purchased from the railroad company in 1885 by the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation organized under the laws of Great Britain. This suit was commenced on May 17, 1890. On September 25, 1891, an amended bill of complaint was filed, in which the fibre company was made party defendant. Its answer was filed March 14, 1892. On January 27, 1893, it conveyed the lands to Graves, who thereafter caused himself to be substituted for it as party defendant. Said section five, so far as is applicable, reads:

"SEC. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation

of the grant to said company, it shall be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and thereupon patents shall issue therefor to the said *bona fide* purchaser, his heirs or assigns."

The Fibre company was an alien, and therefore not within the terms of the section. Graves, it is true, was a citizen, and the ruling of the department has been that the right of purchase from the government conferred by this section is not limited to the immediate purchaser from the company, but may be exercised by a subsequent grantee, who has the necessary qualifications, and that in such case it is immaterial what were the qualifications of such purchaser. See letter of Secretary Noble to the Commissioner of the General Land Office, (11 Land Dec. 229,) in which the Secretary said:

"It can make no difference, in my judgment, whether the applicant is the immediate purchaser from the company, or a purchaser one or more degrees removed. If he is a *bona fide* purchaser of the land and has the required qualifications as to citizenship he is within the intendment of the statute, and if he be not the original purchaser from the company it is immaterial what the qualifications of his immediate grantor, or the intervening purchasers, may have been. If his immediate grantor was a foreigner, and his purchase was simply for the purpose of acquiring title from the government for the benefit of the foreigner, he would not be a *bona fide* purchaser, and would not therefore come within the terms of the act." (*Union Pacific Ry. Co.* v. *McKinley*, 14 Land Dec. 237; *Union Colony* v. *Fulmele*, 16 Land Dec. 273; *Sethman* v. *Clise*, 17 Land Dec. 307; *Ray* v. *Gross*, 27 Land Dec. 707.)

Within the scope of these rulings Graves is entitled to the protection of the statute if he can be considered a *bona fide* purchaser. He bought *pendente lite*, and while he testified that he purchased in good faith and for value, that he was holding the lands under the conveyances, and had paid all legal taxes and assessments levied and assessed since the deeds, he further testified as follows:

"Q. 19. Did you buy these lands in good faith?—A. Yes, expecting to make title to them.

"Q. 20. And do you hold them as said purchaser and as a citizen of the United States?—A. I do.

"Q. 21. And as an innocent purchaser?—A. Well——

"Q. 22. For value received?—A. I hold them for a valuable consideration.

"Q. 23. Well, do you claim to be an innocent purchaser of said lands, under the act of Congress of March 3, 1887?—A. I think I am protected under the act of Congress of 1887. I would like to understand this 'innocent.' What you mean by that? Of course I have notice of the defect—I have notice of the Congressional action taken, and of the pendency of this suit; had it when I bought. Outside of that I consider myself an innocent purchaser. Of course I had that notice of that suit. There is no use

denying that. At the same time, I understand—I think I understand, the act of Congress of 1887, and I think I am protected under it.

Cross-examination:

"Q. 24. How much did you pay the Atlantic and Pacific Fibre Importing and Manufacturing Company for these lands?—A. I have not paid them anything in coin. But I have agreements with them which are the equivalent of the coin.

"Q. 25. What is the nature of the agreements?—A. I am to protect them in the title, that is, protect them in their original purchase money; make what I can out of it over and above that.

"Q. 26. And devote your legal services to that end?—A. Yes. They have to have somebody on this end."

Now while the statute is, as we have stated, remedial and to be liberally construed in order to carry out the purpose of its enactment, yet to sustain this purchase as one made in good faith would ignore the plainest provisions of law in respect to *bona fide* purchasers and would uphold almost any kind of speculative purchase. Congress expressly limited the privileges granted by the act of 1887 to citizens of the United States or those who had declared their intention to become such. It excluded aliens, and in so doing acted in harmony with the general scope of public land legislation. True in the act of 1896 in respect to patented lands it recognized aliens as entitled to the benefits of a *bona fide* purchase, but the fact that in a later statute, and in respect to a different class of lands, it extended certain privileges, is no reason for ignoring the limitations contained in this act as applied to the lands covered by it.

While according to the construction of the Land Department the grantee of a purchaser from the railroad company is entitled to invoke the protection of this statute yet it is one who is himself a *bona fide* purchaser and not one whose "purchase was simply for the purpose of acquiring title from the government for the benefit of the foreigner." It seems to us that the testimony plainly discloses a purely speculative transaction. Graves paid nothing. His agreement was, as he says, to protect the company in its title, or rather in its purchase money, and then he would make what he could over and above that. He was not buying with the purpose of owning the land but was simply engaged in an effort to secure to the original purchaser from the railroad company the money which it had invested in its purchase, advancing, it is true, in that effort, some money in the way of taxes and devoting his legal services to that end, and hoping to make a profitable speculation out of the matter.

Another matter worthy of notice as tending to show a community of interest with the Fibre company is his testimony in respect to the matter of possession. When asked, "Q. Are you in possession of the same?" he replied, "A. Well, we are exercising possession; we are keeping other people off of them. Not farming them, but—yes, we are in possession."

We do not think that defendant Graves has shown that he was a purchaser in good faith. As to him, the decree cannot be sustained. The decree of the Court of Appeals will, therefore, be affirmed in all respects except as to the lands standing in the name of Jackson A. Graves. As to those lands it will be reversed, and the case remanded to the Circuit Court for the Southern District of California, for further proceedings in conformity with this opinion.

True copy.

Test:

Clerk Supreme Court, U. S.